
Appeal Decision

Site visit made on 25 June 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2019

Appeal Ref: APP/G2245/W/19/3226283

site of The Old Rectory, off Brablefield Close, Hartley DA3 7DT

- 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 Miller against the decision of Sevenoaks District Council.
 - The application Ref 19/00356/OUT, dated 7 February 2019, was refused by notice dated 5 April 2019.
 - The development proposed is a replacement dwelling on site of The Old Rectory Hartley.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was made in outline form with access to be considered and all other matters reserved for future consideration. Indicative elevations, floor plans and perspective were provided in the Design and Access Statement showing a proposed dwelling and I have had regard to these drawings.

Main Issues

3. The main issues in this case are as follows:
 - Whether the proposed development is inappropriate development in the Green Belt;
 - The effect on the openness of the Green Belt and the purposes of including land within it;
 - The effect of the proposal on protected species in the locality;
 - The effect of the proposal on trees; and
 - If the proposal is inappropriate, whether any 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 inappropriate development

4. The National Planning Policy Framework (the Framework) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework states that inappropriate development

is harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate in the Green Belt, subject to a number of exceptions as set out in paragraph 145. One of the exceptions is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.¹

5. The appeal site consists of an area of land surrounded by woodland, accessed from a single track unmade drive. On close inspection the remains of a building are visible on the site, with the lower section of some of the walls present, as well as garden steps and piles of rubble, but this is overgrown with trees and undergrowth. There is no building on site and I understand that it was demolished between 1973 and 1980. While I accept that paragraph 145 d) does not specify that the building must be existing, in this case there has been no building on the site for some considerable time and there is no evidence of any residential use. As a result, I conclude that a new dwelling would not benefit from the exception set out in paragraph 145 d), as it would not be the replacement of a building and it would not be in the same use. The proposal would not therefore meet the requirements of this exception.
6. I note that the Council has considered whether the proposal would fall within the exception under paragraph 145 g) of the Framework. This relates to the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development; or not cause substantial harm to the openness of the Green Belt where it would contribute to an identified affordable housing need.
7. Previously developed land is defined in the glossary in Annex 2 of the Framework. The definition excludes land that was previously developed but where the remains of the permanent structure have blended into the landscape. In view of the very limited remains of the building, which are overgrown and seen as part of the surrounding woodland, I concur with the Council's view that the site should not be considered to be previously developed land. I therefore do not find that the proposal would fall within the exception set out in paragraph 145 g). There is no evidence that the proposal would meet any of the other exceptions listed in paragraph 145, and therefore it is inappropriate development in the Green Belt, contrary to the guidance in the Framework.

Openness and Green Belt Purposes

8. A fundamental aim of Green Belt policy, as set out in paragraph 133 of the Framework, is to keep land permanently open. The construction of a dwelling on the site would result in built development where there is presently none. The footprint of the building, the access and accompanying domestic paraphernalia, would inevitably lead to a loss of openness. This is particularly the case as the site currently has no buildings on it, beyond the remains of the former dwelling, and it is seen as part of the open woodland. The development would therefore lead to an encroachment into the countryside and would impact on the related Green Belt purpose.

¹ Paragraph 145 d)

9. I therefore conclude that the proposal would lead to a significant loss of Green Belt openness and would impact on the Green Belt purpose of safeguarding the countryside from encroachment.

Protected species

10. The Framework, in paragraph 170, advises that planning decisions should contribute to and enhance the local environment by, amongst other things, minimising impacts on and providing net gains for biodiversity. Circular 06/2005, concerned with biodiversity conservation, advises that the presence of a protected species is a material consideration when a development proposal is being considered, which would be likely to result in harm to the species or its habitat. The Circular states that surveys should be carried out before planning permission is granted. Consequently, it advises that surveys should only be required by condition in exceptional circumstances, for example where recent surveys have been undertaken and final checks are proposed prior to development commencing.
11. The site is overgrown with trees and undergrowth, and is adjacent to the Rectory Meadows Local Wildlife Site and areas of Ancient Woodland. It is therefore well connected to the wider natural environment. A Preliminary Ecological Appraisal (PEA) was submitted with the application. At the very least the proposal would involve the clearance of vegetation to allow the construction work and the formation of the access.
12. The PEA identified that the site and surrounding woodland contain suitable bat roosting features and that the site has moderate value for foraging and commuting bats, with some trees having potential to provide roosting places, although these trees have not been individually identified. At this outline stage it is not clear whether such trees could be retained. There is therefore a reasonable likelihood that bats could be adversely affected. A detailed survey of trees and the effect of the proposal on bat activity has not been provided. It is therefore not possible to conclude that the proposal would not be harmful to bats.
13. The site is well connected to the adjacent woodland, but the PEA identifies that the site itself is sub optimal for dormice, due to the lack of mature trees, with a poor structure and a limited understorey, and is close to poor habitat closer to the residential area at Bramblefield Close. Moreover, the wider woodland is relatively open and is subject to disturbance by visitors. It concludes that it is unlikely that dormice are present within the site. However, the supporting statement identifies the presence of dormice in the wider landscape, and therefore, despite the less than optimal habitat, there is a reasonable likelihood of dormice being present on or around the appeal site, which could be adversely affected by the proposal. In the absence of a detailed survey for dormice it is not possible to conclude that they are unlikely to be present and therefore that they would not be adversely affected by the proposal.
14. With regard to reptiles, the PEA identifies that there are potentially suitable features for hibernation and shelter on the site, but as the area is densely shaded, and isolated by housing and more extensive woodland habitats, it is unlikely to support significant numbers of reptiles. I recognise that all reptiles are protected from killing and injury, but as the habitat is not suitable it is unlikely that they would be present on or near the site, and are therefore not likely to be adversely affected by the proposal.

15. I appreciate that ecological enhancements and a woodland management plan are proposed to improve the value of the retained woodland for biodiversity and dormice, but this does not negate the need for sufficient information to be provided to ensure that the proposal would not adversely affect protected species. In the light of the advice in the Circular, these are not matters that should be required by condition. Notwithstanding my conclusion in relation to reptiles, there is a reasonable likelihood that the proposal would have an adverse effect on protected species. It would therefore be in conflict with Policy SP11 of the Sevenoaks District Core Strategy 2011, insofar as it seeks to conserve biodiversity, and in conflict with the guidance in the Framework.

Trees

16. The site is wooded and contains a number of trees of varying ages and species. A Tree Preservation Order (TPO)² protects woodland around the site and individual trees. Paragraph 170 of the Framework advises that planning decisions should recognise the wider benefits of trees and woodland. Paragraph 175 c) advises that development resulting in the loss of deterioration of irreplaceable habitats, such as ancient woodland and ancient or veteran trees, should be refused.
17. The appeal proposal would result in the clearance of the trees and scrub that have colonised the remains of the dwelling, and some clearance in the surrounding area is likely, in order to allow the formation of a driveway, parking and turning area, and to create some form of outdoor amenity space that would benefit from adequate sunlight and daylight. A tree survey identifying and classifying individual trees has not been provided, and therefore it is not possible to conclude that protected trees would not be either lost or adversely affected. Moreover, in the absence of a detailed survey it is not clear whether veteran or ancient trees would be harmed. This is not a matter that can be resolved through a condition, as it is a material consideration that needs to be taken into account in the determination of the proposal. In the absence of firm evidence that no protected, veteran or ancient trees would be harmed, there is a reasonable likelihood that the proposal would be harmful to trees, contrary to the guidance in the Framework.

Other Considerations

18. The site is located close to the villages of Hartley and Longfield, which offer a range of services and facilities, including shops, schools and access to public transport, and I note that the site is close to Longfield Station. I am aware that the Council could not demonstrate a five year housing land supply at the time the application was refused, and any change to its position since then has not been tested. This proposal would make a contribution towards housing provision, and would provide an opportunity for a self-build/custom house. The need to release land in the Green Belt and Area of Outstanding Natural Beauty (AONB) to meet housing targets appears likely. The proposed management of the former garden of the Old Rectory could enhance the biodiversity of the site. There is a lack of concern from neighbouring residents or the highway authority.

² TPO 16 1980

Conclusions

19. 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 addition, there are adverse impacts on openness, the Green Belt purpose of safeguarding the countryside from encroachment, protected species and trees. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm, is clearly outweighed by other considerations.
20. I give some weight to the contribution that the proposal would make to the provision of housing, and the opportunity for a self-build/custom house, and its accessibility to Hartley and Longfield with facilities and public transport connections. Enhancements to biodiversity could be put forward as a benefit for many developments and are outweighed by the potential harm to protected species and trees. The lack of concern from neighbours or the Highway Authority is a neutral consideration. With regard to the release of Green Belt and AONB land through Local Plan allocations, this is a rigorous process that is tested through Examination and does not affect the restrictive nature of Green Belt policy. The substantial weight to be given to Green Belt harm is not clearly outweighed by other considerations sufficient to demonstrate very special circumstances.
21. Paragraph 11 of the Framework states that where policies which are most important for determining the application are out of date, permission should be granted unless specific policies within the Framework provide a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Notwithstanding the Council's housing land supply position, the first step is to consider whether there are specific policies in the Framework that indicate that development should be restricted. Footnote 6 of the Framework gives examples of such policies, and includes "Green Belt". For the reasons already set out, the proposal would conflict with the Framework policy in relation to Green Belt. This provides a clear reason for refusing the appeal proposal. As such, the 'tilted balance' in paragraph 11 would not apply in these circumstances.
22. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

N Thomas

INSPECTOR