
Appeal Decision

Site visit made on 2 October 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2019

Appeal Ref: APP/M3645/W/19/3231624

Land to the south of Honeypot Lane and east of Dwelly Lane, Edenbridge, Surrey TN8 6QH

- 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 D Withers against the decision of Tandridge District Council.
 - The application Ref TA/2018/2199, dated 2 November 2018, was refused by notice dated 25 January 2019.
 - The development proposed is for an earth bund.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is retrospective as the earth bund is already in place. It appears to have been constructed in accordance with the plans which were before the Council when it made its decision. I have assessed the nature of the development as built on site, based on its planning merits.
3. The Council's Written Statement incorrectly refers to a different appellant and appeal site in the heading. However, the appeal and application references are correct and it is clear from the statement that it refers to the appeal before me.

Main Issues

4. Having regard to the location of the site within the Green Belt, the main issues are:-
 - Whether the development constitutes inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework ('the Framework'),
 - The effect of the development on the character and appearance of the rural area and health of the hedge,
 - Whether sufficient information has been provided regarding the effect of the development on biodiversity, 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 development.

Reasons

Green Belt issues

5. The Framework is a material consideration in determining Green Belt proposals. Paragraph 133 identifies that the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. At paragraph 143 the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 directs that any harm to the Green Belt should be given substantial weight.
6. Policy DP10 of the Local Plan¹ states that the Council will not permit inappropriate development in the Green Belt unless in very special circumstances. This is broadly consistent with the Framework. Local Plan Policy DP13 relates to buildings and to the other forms of development in the Green Belt listed as exceptions in the Framework. The policy refers to paragraphs taken from the 2012 version of the Framework² and the list of exceptions has since been amended in the updated Framework. However, the policy is still broadly consistent with the Framework.
7. The appeal site is an irregular shaped field located to the rear of recently built houses along Honeyput Lane. Sheep were grazing at the time of my visit. A public right of way (PROW) crosses the site southwards from the stile off Honeyput Lane.
8. The earth bund is some 121m long, 6.7m wide and approximately 2m in height. There is some dispute between the parties as to the actual overall height. Nonetheless it is a sizeable structure that is aligned along most of the western boundary parallel, and in close proximity, to the existing boundary hedgerow. The bund has been shaped with steep sides and a flat top measuring 0.5-1.8m wide and probably required an element of pre-planning. At the time of my visit the bund was greening up with weeds and grass in places and there would likely have been some natural settling of the structure and the angle of its sides. Due to the resulting physical alteration to the land, combined with the scale of the bund, the proposal represents an engineering operation.
9. As the appellant points out, engineering works *per se* are not inappropriate in the Green Belt. Indeed paragraph 146 of the Framework lists engineering operations as one of the other forms of development that are deemed not inappropriate in the Green Belt. However, for Green Belt purposes engineering operations are only deemed not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Therefore, I must now assess the impact of the earth bund on the openness of the Green Belt.
10. The site is set within a wider rural setting, with open countryside around. By reason of its length, height, form, bulk and location in a field, the earth bund represents remoulding of the ground. This has resulted in a substantial unnatural physical structure whose presence, spatially and visually, reduces the

¹ Tandridge District Local Plan Part 2: Detailed Policies 2014-2029 (adopted July 2014)

² The National Planning Policy Framework was published in March 2012, revised 24 July 2018 and subsequently updated 19 February 2019.

openness of the Green Belt and detracts from the surrounding landscape character and appearance. It is therefore an encroachment into the countryside, which conflicts with one of the five purposes of including land in the Green Belt listed in paragraph 134 of the Framework.

11. That the bund has been constructed from material derived from the surrounding land, when Honeypot Farm was redeveloped for the construction of housing, does not mitigate against the overall size and scale of the structure and its adverse impact on openness of the Green Belt. Whilst the bund may settle and vegetate over time, this would not mitigate against the openness as it would still leave a prominent physical structure rising up from the ground.
12. I find the earth bund causes harm to the openness of the Green Belt and undermines the fundamental aim of keeping land permanently open. The development constitutes inappropriate development, which is by definition, harmful to the Green Belt and to which substantial weight should be given. Accordingly, it conflicts with Local Plan Policies DP10 and DP13 and the Framework.

Character and appearance

13. Earth bunds are not a typical landscape feature of the surrounding area, where the land is generally flat. Its height, length, bulk, massing and steepness combine to create an incongruous feature in the field, out of keeping with the prevailing surrounding area. Furthermore, being in such close proximity to the hedge, the bund obscures the hedge from view, which is a traditional and characteristic feature of the area to be valued and protected. Whilst the site is not within a statutorily designated landscape, the Framework still requires development to enhance the natural and local environment and paragraph 170b) recognises the intrinsic beauty of the countryside.
14. Whilst the bund is read against a landscaped backdrop of the existing hedge, the bund is wholly visible from the PROW, which passes at the southern end of the bund. Existing buildings to the north and north west help screen it from the road. The presence of a sizeable unnatural landscape intervention would reduce the experience and enjoyment of the wider countryside for users of the PROW and its wider network.
15. Whilst a condition could be imposed requiring the bund to be landscaped, or grassed over, this would not disguise or mitigate against the presence of the bund and it being an incongruous feature.
16. The fact the bund has co-existed alongside the hedgerow for a while, due to the retrospective nature of the application, does not mean that the bund has not caused harm to the hedge. The appellants contest the Council's allegation that the bund might impair the hedgerow's roots growth and ultimately jeopardise its presence in the landscape, but has not submitted any substantive evidence to counter the Council's Tree Officer's concerns. In the absence of evidence to demonstrate that harm would not be caused to the hedge, there remains uncertainty as to any adverse effects the bund could have on the hedge.
17. Whilst views of the earth bund are limited, I find it nonetheless causes harm to the character and appearance of the rural area. There is also uncertainty as to whether the bund will cause harm to the hedge so as to endanger it and

ultimately result in its loss, which would adversely harm the character and appearance of the area. Accordingly, the proposal would be in conflict with Policy CSP18 of the Core Strategy³ and Local Plan Policy DP7. These collectively seek, amongst other things, to ensure that new development in the countryside respects the character and local context, has regard to the topography of the site and other important features that contribute to local distinctiveness in order to integrate effectively with its surroundings.

Biodiversity

18. The hedge is regarded as a type of Green Infrastructure that is likely to be a suitable habitat for protected species. Paragraph 99 of Circular 06/2005⁴ advises that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision..."
19. The appellant submitted a Biodiversity Survey and Report⁵. It does not appear to have been undertaken by a competent person qualified in ecological matters, which brings into doubt its claims. The report states "The works are unlikely to affect protected species. There is no evidence of there being any presence, including bat droppings or roosts, birds' nests, or sightings of bats, badgers, dormice, adders, slowworms and nesting birds near to the location where the bund is situated".
20. In light of the above and that the Council's Biodiversity Checklist indicates that no surveys have been carried out with regards to protected species, I find there is insufficient information to indicate whether the necessary surveys have been carried out.
21. The Council is satisfied that the nearby Site of Special Scientific Interest and an ancient woodland would not be directly or indirectly harmed by the bund due to the separation distance. Whilst the hedgerow is already established, its local environment has been changed. The bund, if left to naturally regenerate, may provide a habitat for flora and fauna, but this does not address the need to deal with protected species.
22. In light of the guidance and paragraph 175 of the Framework there is insufficient information to confirm that any protected species would not be adversely affected by the earth bund and to be able to fully assess the biodiversity impacts of the bund. This weighs against the proposal. Accordingly, the proposal would be contrary Core Strategy Policy CSP17 and Local Plan Policy DP19. These seek, amongst other things, to conserve and enhance the natural environment by refusing development that would harm the broader Green Infrastructure network and protected species.

Other Considerations

23. I acknowledge the appellant's reasons for constructing the bund to control waste from an outfall pipe installed at the adjacent Barn Owl Kennels, and which apparently discharges directly into the appellant's field with associated

³ Tandridge District Core Strategy (adopted October 2008)

⁴ Government circular: Biodiversity and geological conservation – statutory obligations and their impact within the planning system. Dated 16 August 2005

⁵ White & Sons dated 7 January 2019

health and safety concerns for livestock. However, in the absence of any substantive drainage or agricultural evidence to justify the need for the earth bund, I afford the matter limited weight.

24. Whether the bund serves to contain noise, mainly dog barking, is not supported by any substantive acoustic evidence to justify its construction. I therefore give this matter limited weight
25. The appellants have suggested that a temporary planning permission be granted for 3 years to allow time for the treatment plans at Barn Owl Kennels to become operational and in turn resolve the drainage issues arising on the appeal site. Whilst I acknowledge the appellants' concerns, the earth bund is currently causing harm to the openness of the Green Belt and the character and appearance of the area. Granting a temporary permission would not overcome the harm.
26. Any issues with the adjacent Kennels is not a matter for this appeal. The Council can avail upon its enforcement powers if there is a breach of planning control or a breach of condition.
27. Under permitted development⁶ the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure up to 2m in height can be erected, when not adjacent to a highway. The appellants could erect a different means of enclosure under permitted development and there would be no requirement to assess the proposal against Green Belt policy. Hence the issues of openness or inappropriate development would not come into play. But they have not done so and the matter is somewhat hypothetical. I therefore give the matter moderate weight, not significant weight as the appellants think should be the case. Furthermore, I am considering an earth bund, which has not been constructed as a means of enclosure as it does not go around the whole field and only runs partly along one site boundary.

Other Matters

28. A number of nearby residents raise a series of other concerns about the proposal but in view of my conclusions on the main issue there is no need for me to address these in the current decision.
29. I acknowledge the appellants' concerns with the Council's handling of the application, but in reaching my decision I have been concerned only with the planning merits of the case.

Planning Balance and Conclusion

30. The development constitutes inappropriate development in the Green Belt, which carries substantial weight. The scheme is also at odds with at least one purpose of designating land inside the Green Belt, which is serious planning objection. Additional weight is given to the harm to the character and appearance of the area and to biodiversity. As cited above, the development conflicts with both local and national planning policy.

⁶ Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015

31. On the other side of the balance, limited weight is given to the argument about the need for the bund and moderate weight to the potential permitted development argument. The advanced considerations in support of the appeal, whether taken individually or cumulatively, do not, on balance, clearly outweigh the conflict with planning policies designed to protect the Green Belt so as to justify the grant of planning permission on the basis of very special circumstances, which do not exist in this case.
32. For all the above reasons and having regard to all other matters, I conclude that the appeal should be dismissed.

K Stephens
INSPECTOR