
Appeal Decision

Site visit made on 11 November 2019

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th December 2019

Appeal Ref: APP/A2280/W/19/3230706

80 Pilgrims Road, Upper Halling, Rochester ME2 1HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Miss Yasmin Ali against The Medway Council.
 - The application Ref MC/19/0890, is dated 1 April 2019.
 - The development proposed is to erect one 2-bedroom one and a half storey residential log cabin.
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Decision

1. The appeal is dismissed and planning permission for one 2-bedroom one and a half storey residential log cabin is refused.

Procedural Matters

2. I have amended the description of development in the banner heading to omit superfluous information that addresses the purpose or merits of the appellant's case and does not form part of the description of development.
3. The appeal is against the Council's failure to determine an application for planning permission. The Council has provided a statement for the appeal which states that in its opinion the proposal is unacceptable, however, these are not formal determinations of the Council as the jurisdiction to determine the applications transferred from the Council upon valid receipt of the appeal. However, the Council has set out its reasons for concluding the scheme would be unacceptable and would have refused the application had it been empowered to do so. I have therefore taken these reasons into account in determining the Main Issues.
4. The revisions to the design of the proposal and its location within the site suggested as alternative development by the appellant would change the nature of the proposed development before me. If I were to accept these revisions it would deprive interested parties of the opportunity of consultation. With cognisance of the Wheatcroft principles, I have therefore disregarded these matters in my consideration of this appeal.

Main Issues

5. The main issues are:
 - whether the development would be inappropriate development in the Green Belt;

- the effect of the proposal on the openness of the Green Belt;
- whether the site would be an appropriate location for residential development, having regard to the development plan;
- the effect of the proposed development on the character and appearance of the countryside and the landscape character of the Kent Downs Area of Outstanding Natural Beauty, with particular regard to the removal of trees on the site;
- the effect of the proposal on the ecological and biodiversity value of the site and nearby Halling to Trottiscliffe Site of Special Scientific Interest;
- whether the proposed development would make suitable arrangements for access, parking and recharging of electric vehicles, with particular regard to highway safety; and
- if the development is inappropriate within the Green Belt, 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 required to justify the proposal.

Reasons

Inappropriate development

6. The National Planning Policy Framework 2019 (the Framework) sets out the Government's planning policies for England and is an important material consideration in all planning decisions. Paragraph 145 of the Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate development, unless it meets one or more of a list of exceptions. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. Whilst referring to the now replaced Planning Policy Guidance 2, the Local Plan¹ reiterates this stance in its explanation behind Policy BNE30. This sets out that development will not be permitted unless it is designed and sited so that the open character of the area is maintained and it accords with the purposes of including land in the Green Belt. I shall come onto this in more detail later.
8. The policy also lists exceptions to the presumption against inappropriate development for the reuse and construction of certain types of new buildings. Given that the proposal is for a new residential property, only limited infilling within the village boundary of Upper Halling would be permitted.
9. The Local Plan is of some age and the wording of the Framework's most recent iteration is the most up to date expression of the national policy position on development in the Green Belt. Whilst the Framework is restrictive in what it permits, it is not as prescriptive as the Local Plan. Moreover, one of the exceptions at Framework paragraph 145(e) concerns 'limited infilling in villages.'

¹ Medway Local Plan, Adopted May 2003.

10. The appeal site is situated some distance from North Halling and Upper Halling. It is amongst irregularly spaced houses, on plots of varying sizes and with different set-backs, on the north side of Pilgrims Road. There is a small group of houses to the southern side of the road but the remainder of the frontage is primarily undeveloped and occupied by mature tree cover. Beyond this, the land falls away toward the former Cemex works, which has been partially redeveloped for housing as St. Andrews Park. This lies outside the Green Belt.
11. Although Pilgrims Road leads between recognised settlements, the part of the road near to the appeal site has the character of a country lane, bounded by mature trees to either side and lacking any footway. The housing is predominantly ribbon development on one side of the road beyond North Halling. Those factors give the immediate area a semi-rural feel and mean that it has a clearer affinity with the countryside than the more built-up part of the nearby settlements. The appeal site would not therefore be situated within a village.
12. Given the above factors, the proposal does not satisfy the exception in Framework paragraph 145(e), as it would not form limited infilling in a village.
13. I am referred to the exception contained in paragraph 145(f) of the Framework. This relates to 'limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites)'. I note that the appellant has identified difficulties in finding affordable accommodation for rent or purchase. I have not, however, been provided with evidence to demonstrate that there is a shortage of affordable accommodation in the area to meet the appellant's needs, that the proposal would be relatively affordable to construct, or that it would meet an identified affordable housing need or that it would meet the definition of a 'starter home'².
14. Similarly, whilst the appellant may qualify as a self-builder, I have not been provided with evidence to demonstrate that there is a risk that the appellant could be made homeless or that no land is allocated or consented for self-build dwellings in the locality. Furthermore, I have not been referred to any local policy exceptions that would apply to the development.
15. Given the above factors, the proposal does not satisfy the exception in Framework paragraph 145(f), as it would not provide limited affordable housing for community needs.
16. I have also been referred to the exception in paragraph 145(g) of the Framework in respect of 'limited infilling or the partial or complete redevelopment of previously developed land'. Although it is unclear from the evidence before me how the site may have been used by Rugby Cement or Cemex, large parts of the site incorporate significant tree cover and are primarily overgrown. Therefore, even if the site was previously developed, it would be excluded from the definition of Previously Developed Land as set out in the Framework³, as the remains of any permanent structure or fixed surface structure have since blended into the landscape. Furthermore, there is also no

² Annex 2 of the Framework refers to the definition of a 'starter home', which is as specified in Sections 2 and 3 of the Housing and Planning Act 2016, and any secondary legislation made under these sections.

³ Annex 2 of the Framework

substantive evidence before me to suggest that the site has been added to the Council's Brownfield Land Register.

17. Given the above factors, the proposal does not satisfy the exception in Framework paragraph 145(g), as it would not form limited infilling on previously developed land. As the appeal scheme would not meet any of the exceptions in paragraph 145 of the Framework, it would form inappropriate development in the Green Belt.

Openness

18. As set out in paragraph 133 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics thereof being their openness and permanence. The physical presence of built forms may affect openness, which can also have a visual element.
19. The appeal site, between houses situated at 72 and 80 Pilgrims Road, comprises a partially wooded area of land and is not occupied by any built form. The erection of a sizeable detached residential property would therefore have an adverse impact on openness.
20. Whilst the site is currently partially screened from where public views can be obtained, given the proposal is for built form, it would be clearly discernible in those views. Furthermore, additional or replacement planting would fail to negate the increase in built form and the bulk and physical presence of the proposal, notwithstanding other development in the area.
21. For the above reasons, the proposed development would harm the openness of the Green Belt in both visual and spatial terms. The scheme would therefore be contrary to the main aims of Green Belt policy at local and national levels, which I have set out above.

Location of Development

22. The site is situated within an area of countryside, as defined by Policy BNE25 of the Local Plan. This policy suggests that development in the countryside will only be permitted if it maintains, and wherever possible enhances, the character, amenity and functioning of the countryside.
23. The policy is therefore restrictive and only permits particular types of development including development essentially demanding a countryside location (such as agriculture, forestry, outdoor or informal recreation). The appeal scheme is not for any of the types of development mentioned in the policy. I therefore conclude that the proposal would conflict with the policy, as it would encompass residential development outside a defined settlement boundary.

Character and appearance of the countryside, the landscape character of the AONB and the removal of trees on the site

24. The appeal site is located within the Kent Downs Area of Outstanding Natural Beauty. Land rises steeply from the Medway Valley towards the site and there is a clearing to its centre. However, mature trees within the site blend into the dense woodland to the north that provides a sylvan backdrop to existing

- dwellings. This makes a significantly positive contribution to the character and appearance of the area and the landscape character of the AONB.
25. It is clear that other properties of a varied design and form have been built into the slope, the perceptibility of development would therefore not in itself equate to visual harm. However, the drawings accompanying the planning application appear to suggest that the proposal, which includes a two-metre-wide hardstanding around the building, would be constructed on a flat site. Given the topography within the site and the size of the proposal in relation to it, there would be a high probability that significant works would be required to accommodate the proposal, particularly through alterations to the site levels.
26. The application is not accompanied by a topographical survey and the drawings do not refer to the extent of any engineering operations that would be required to enable the property to be accommodated on a uniform area of land. Furthermore, the drawings also do not show the crown spread and root protection areas of the trees within the site and, whilst a significant number of trees would be removed, the number could be greater due to the aforementioned works.
27. I accept that the trees within the site are not covered by a Tree Preservation Order and they appear to be covered in Ivy, but they still make a positive contribution to the character and appearance of the area. There is also no substantive evidence before me to suggest that the health of the trees would inhibit their ability to continue to make a positive contribution. In addition, I appreciate that a landscaping scheme could be designed to include replacement tree planting, but this would be unlikely to mature in time to provide tree coverage commensurate with the existing verdant character of Pilgrims Road. Moreover, it would not be likely to have a meaningful effect in softening the appearance of the proposed development for some time. Nevertheless, landscaping should not be relied upon to hide development from view that would otherwise be visually harmful, as it could fail to establish. I am not persuaded therefore that my concerns could be addressed with planning conditions in relation to landscaping.
28. The evidence before me regarding the effect of the proposal on the trees and land levels within the site does not successfully demonstrate that it could be accommodated within the site without resulting in a visually dominant form of development.
29. There is no policy presumption within either the Development Plan or the Framework against any development within the AONB, though the scale and extent of development in such designated areas should be limited. However, I conclude that the proposed development would have a significantly detrimental effect on the character and appearance of countryside and would neither conserve nor enhance the landscape character of the AONB. Hence, it would not accord with Policies BNE1, BNE32 and BNE43 of the Local Plan. Together these require that development should be designed to be appropriate in relation to the character, appearance and functioning of the built and natural environment, including through the retention of trees and other landscape features that provide a valuable contribution to local character. In particular, in the AONB development will only be permitted when it conserves its natural beauty, wildlife and cultural heritage.

30. For similar reasons, the proposal would also be in conflict with paragraphs 124, 127, 170 and 172 of the Framework. In particular, paragraph 172 specifically establishes that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB, which have the highest status of protection in relation to these issues.

Ecology and biodiversity

31. The appeal site is outside the designated area of the Halling to Trottiscliffe Site of Special Scientific Interest (SSSI), but it is part of a wooded area that extends into the SSSI. It is also covered by lower level vegetation. Given the defining characteristics of the site and its close relationship with the SSSI, it is likely that the site would be habitat for protected species.
32. I have not been provided with any substantive evidence in relation to the potential effect of the proposal on the ecological and biodiversity value of the site or the SSSI, or the requirement for any mitigation or enhancements that may be required within the site or SSSI. Furthermore, none of the evidence before me would demonstrate an overriding need for the development to be located within the application site, as required by Policies BNE35 and BNE37 of the Local Plan and paragraph 175 of the Framework.
33. I note that the Council has approved other development that is either in or near to the SSSI. However, I have considered this appeal proposal on its own merits. The existence of other development in or adjacent to the SSSI in the locality would not therefore provide justification for a further development that I consider would be harmful to the ecological and biodiversity value of the site.
34. The appellant has also referred to the screening of the development for Environmental Impact Assessment⁴ purposes, undertaken on behalf of the Secretary of State by The Planning Inspectorate. This states, 'while there may be some impact on the surrounding area and nearby designated sensitive areas as a result of this development, it would not be of a scale and nature likely to result in significant environmental impact'. However, the purpose of the screening was to establish whether it was necessary for the appellant to carry out an Environmental Impact Assessment and this was not the case. The screening is not a formal consideration of the impacts identified, that is the purpose of this appeal. Its content would not therefore outweigh the concerns that I have identified in connection with the proposal.
35. In light of the above, I conclude that the proposal would have a significant effect on the ecological and biodiversity value of the site and the SSSI. Hence, it would not accord with Policies BNE35, BNE37 and BNE39 of the Local Plan. Together these require that developments should not materially harm, directly or indirectly, the scientific or wildlife interest of SSSIs or other non-designated important wildlife habitats or features, including statutorily protected species and/or their habitat.
36. The proposal would also be in conflict with paragraphs 170 and 175 of the Framework. These require that decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures. Furthermore,

⁴ Under Regulation 14(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 571/2017).

development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it, should not normally be permitted.

Access, parking and electric vehicle recharging

37. The proposal includes an access from the carriageway and a wall to the roadside boundary, which is currently bound by dense landscaping and a tall fence. However, the application did not include any detail in relation to either.
38. I appreciate that there are other accesses to dwellings within Pilgrims Road, flanked by walled entrances, and I have not been made aware of any accident history in relation to these accesses. However, this does not mean that accidents would not occur in the future in association with the proposal, particularly as the evidence before me does not demonstrate that vehicles could enter and leave the site in a safe manner.
39. Notwithstanding the access arrangements for the proposal, there would be sufficient space available within the site to accommodate the parking and manoeuvring of vehicles and electric vehicle recharging point(s) could be provided in time to serve the proposal. With this in mind, the proposal would accord with Policy T13 of the Local Plan and paragraph 105 of the Framework.
40. For the reasons outlined above, despite my findings in relation to parking and manoeuvring within the site and the provision of recharging points, I conclude that the access arrangements for the proposed development would have a significantly detrimental effect on highway safety. Hence, the proposal would not accord with Policies T1 and T2 of the Local Plan, which require that proposals which involve the formation of a new access, are not detrimental to the safety of vehicle occupants, cyclists and pedestrians.

Other Considerations

41. I acknowledge that the proposed dwelling could be constructed to be environmentally friendly but I have not been provided with substantive evidence to demonstrate the detailed sustainability credentials of the proposal.
42. In the context of Paragraphs 59 and 68 of the Framework, I note the contribution that would be made to the supply of housing by this small site, particularly as it could be built-out relatively quickly. There is no threshold for the assignment of weight to the quantum of residential development. The proposal would deliver a 2-bedroom property, which would contribute to the overall housing mix in the area. However, as the contribution to the supply of housing would be minor in its extent, I afford this benefit limited weight.
43. Some economic benefits would arise from, for example, employment and procurement of materials during the construction period. Future occupiers would also contribute to the local economy and towards the viability of local services. However, again, given the modest scale of the development such benefits would be limited.
44. I have been referred to the Council's Strategic Housing Land Availability Assessment 2018, which references a site nearby⁵. The full details of the site assessment are not before me so it is unclear whether the site would be

⁵ SLAA Reference Number 1164

available, suitable or viable for development in the future, as required by paragraph 67 of the Framework. I am not therefore able to afford this matter any weight.

45. The site is at a low risk of flooding and suitable arrangements could be made for drainage. The proposal would be sufficiently spaced from neighbouring properties and include fencing at the exterior to protect privacy. The occupants of the proposed property would also benefit from a south-facing aspect. However, the absence of harm in these matters would weigh neither for nor against the scheme.
46. The appellant has referred to the conduct of the Council in the determination of the planning application, including the nature and clarity of the advice given, the information required to be able to determine the application, the approach to and consistency of its decision-making, and the evidence submitted as part of the appeal. These are primarily not matters for me to consider as part of this appeal. I have considered the individual merits of the appeal scheme in relation to the relevant policies and evidence before me.
47. The appellant has referred to the approval of alterations to dwellings and other works undertaken by occupants of dwellings in Pilgrims Road⁶, including retrospectively. Owners of other properties are also alleged to have removed trees. I accept that incremental change within the locality has an effect upon the Green Belt, but the full circumstances behind the Council's decisions are not before me. Nonetheless, other exceptions apply to such developments in the Local Plan and the Framework. The works undertaken would not be for development comparable with the proposal, so would not attract any weight.

Planning Balance and Conclusion

48. The appeal scheme is inappropriate development in the Green Belt. This is harmful by definition. The proposal would reduce the Green Belt's openness which gives rise to additional harm. In each case, these harms render the appeal scheme contrary to the aims of both the policies of the development plan, as I have identified them, and the relevant sections of the Framework.
49. The location of the proposal would be unsuitable and I have identified significantly detrimental effects on the ecological and biodiversity value of the site and SSSI, highway safety, and the character and appearance of the surrounding built and natural environment, the openness of the countryside and the special character of the AONB, all contrary to relevant development plan policies.
50. Paragraph 144 of the Framework advises 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 resulting from the proposal, is 'clearly outweighed by other considerations.'
51. I have only given limited weight to the appellant's personal circumstances due to the lack of substantive evidence to support her case.

⁶ I have been referred to development at Nos 47, 63, 72, 86, 88, 97, 98, 104, 106, 108, 110, 112, 114, 130, 132; and Court Farm. This includes planning application references: MC/17/3288, MC/17/2805, MC/14/2432, MC/06/1055, MC/05/1507 and MC/03/0063.

52. Against this, the other considerations that have been advanced are not sufficient, either individually or cumulatively, to clearly outweigh the harm to the Green Belt and the other harm I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
53. The proposed development would be contrary to the development plan and the Framework, taken as a whole. There are no other material considerations that would indicate that the proposed development should be determined other than in accordance with the development plan. Accordingly, for the reasons given, I dismiss the appeal and planning permission is therefore refused for the appeal scheme.

Paul Thompson

INSPECTOR