



Appeal Decision

Site visit made on 11 November 2019

by J M Tweddle BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Appeal Ref: APP/G5180/W/19/3235855

Land adjacent to Little Lillys, Chelsfield Lane, Orpington BR6 6EP

- 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 Matt Ellis against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/18/04855/FULL1, dated 22 October 2018, was refused by notice dated 10 June 2019.
 - The development proposed is the erection of a single storey detached dwelling on land adjacent to Chelsfield Lane.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the Council of the London Borough of Bromley against Mr Matt Ellis. This application is the subject of a separate Decision.

Procedural Matter

3. The site visit was arranged as an 'access required site visit'. However, neither the appellant or their agent was present when I arrived at the site during the pre-arranged period. Nevertheless, I was able to carry out an unaccompanied site visit as I was able to see all I needed from public land. The parties were subsequently informed of this.

Main Issues

4. The main issues are:
 - Whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - The effect of the development on the openness of the Green Belt;
 - The effect of the development on the character and appearance of the surrounding area and whether it would preserve or enhance the character or appearance of the Chelsfield Conservation Area;
 - The effect of the proposed access on highway safety;

- The effect of the proposal on archaeological remains;
- Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, and if so, whether this would amount to the very special circumstances required to justify the proposal.

Reasons

Background

5. The southern part of the site, fronting Warren Road, has been the subject of two previous applications for planning permission for a dwelling¹. On each occasion permission was refused and subsequent appeals were dismissed². I have considered the findings of the two previous Inspectors, but as I have not been provided with the full details of these historical proposals I am unable to draw any firm comparisons with this appeal. I have instead considered the appeal on its own individual merits and on the basis of the evidence as presented in this case.

Whether inappropriate development

6. The appeal site is located within the Green Belt, where Policy 49 of the Bromley Local Plan 2019 (the BLP) and paragraph 145 of the Framework establish that the construction of new buildings is to be regarded as inappropriate development, subject to a limited number of exceptions. One such exception, listed by Policy 49 of the BLP, is for 'limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan'. This approach is supported by Policy 7.16 of the London Plan and the policies of the Framework. The proposal is not for affordable housing and therefore the question is whether or not the proposal is considered to be limited infilling in villages.
7. Chelsfield Lane leads north-westwards out of the village and into the open countryside beyond. The appeal site, with its relatively wide frontage onto the lane, is an undeveloped field which represents a visual break in development, marking a point of transition where the character of the lane changes from the built form of the village to the open countryside beyond. Moreover, when viewed from the lane, the site lies beyond Little Lillys, which is the only dwelling on the western side of Chelsfield Lane. Whilst the site's frontage along the lane is opposite an existing dwelling, its undeveloped appearance is more aligned to that of the open countryside which surrounds the settlement. For these reasons, I would not describe the appeal site as being located within the village.
8. I appreciate that the Inspector in the most recent appeal found the southern end of the site to be located within the village. However, whilst that area of the site may be more closely associated with the built form of the settlement, the appellant has stressed that the current site differs substantially from that of the previous appeal. I agree, as this appeal now includes the whole of the field stretching from Warrens Road, around the rear of Little Lillys, and through to Chelsfield Lane. Thus, notwithstanding that the area fronting onto Warrens Road may reasonably be considered to form part of the village, I find that the

¹ Local Planning Authority Ref. DC/10/00055/FUL1 and DC/16/03067/FULL1

² Appeal Ref. APP/G5180/A/10/2124618 and APP/G5180/W/16/3166005

site in its entirety, and specifically where the dwelling is proposed to be sited, cannot reasonably be considered to form part of the village and is therefore open countryside outside of the settlement.

9. I also acknowledge that the site falls within the boundary of the Chelsfield Village Conservation Area and is within approximately 200 metres of the village centre. However, these factors do not define the extent of the village.
10. Even if I were to accept the appellant's argument that the site is within the village it would not constitute 'limited infilling' as I consider that this term implies the development of a site that is between existing buildings. As discussed above, the street scene along the western side of Chelsfield Lane terminates at Little Lillys and therefore there is no further development for which the proposal could be sited between. The positioning of Orchard Cottage, to the west, and Lillys, to the east, does not change my view in this regard.
11. Consequently, the proposal would not represent limited infilling in a village and would therefore be inappropriate development in the Green Belt which is, by definition, harmful and should not be approved except in very special circumstances. It would therefore conflict with BLP Policy 49, Policy 7.16 of the London Plan and the associated policies set out in the Framework.

Openness

12. A fundamental aim of Green Belt policy, as set out in paragraph 133 of the Framework, is to prevent urban sprawl by keeping land permanently open. As such, openness is an essential characteristic of the Green Belt which has both spatial and visual aspects.
13. The appeal site is, essentially, a field located beyond the village which is currently free from development apart from a small timber framed shed that is set against the north-western boundary. As such, the site makes a significant contribution to the openness of the Green Belt. The erection of what would be a substantial single storey dwelling at this location would result in built development where there is presently none. The substantial foot print of the building along with its paved terrace and bound gravel driveway would lead to a significant loss of openness. Due to its extensive footprint, its subterranean elements and single storey scale would do little to temper its harmful effects on the openness of the Green Belt.
14. Furthermore, given that I have characterised the site as open countryside rather than as part of the village, the proposal would lead to an encroachment of development into the countryside and in doing so would conflict with the related Green Belt purpose. As a result, I find that the development would lead to a significant loss of Green Belt openness and would impact on the Green Belt purpose of safeguarding the countryside from encroachment.

Character and appearance

15. The site lies within the Chelsfield Village Conservation Area (CA). The CA has a varied character and appearance with its historic core centred around the junction of Warren Road, Church Road and Bucks Cross Road, where the built environment is compact and well defined. More sporadic development radiates out from the centre along narrow lanes which lead out of the village and into the surrounding countryside. The open and spacious aspects of the fields which

surround the village provide a positive contribution to its overall character and form an important rural setting that frames the village.

16. The development would erode the positive contribution that the appeal site makes to the setting of the village. The very presence of development at this location would have a negative impact on the rural setting of the village, harmfully diminishing its open and spacious character and detrimental to the character and appearance of the Chelsfield Village CA. Furthermore, its appearance would not be akin to an agricultural style building but instead would be a notable departure from the prevailing character of the area.
17. The appellant argues that the development is of an exceptionally high quality design that has regard to the appearance of surrounding residential properties with its design informed by agricultural buildings in the wider landscape. However, the building's design, being set into the ground and incorporating a flat sedum roof with a mix of textured and perforated brick work, metal cladding and full height glazing, would not be in keeping with the character of nearby dwellings, which are largely characterised by two storey properties with pitched roofs and set within spacious grounds. I therefore consider that these aspects of its design would form incongruous features that are at odds with the character of this rural setting.
18. While a degree of landscaping could reduce these harmful effects, the dwelling would still be visible from along Chelsfield Lane and would appear as a discordant form of development. Furthermore, landscaping ought to be used to soften, enhance or complement the appearance of new development not to conceal inappropriate development that fails to contribute positively to its surroundings.
19. In terms of the Framework, the harm to the CA would be 'less than substantial' as it would affect only its immediate surroundings. It is therefore incumbent upon me to give considerable importance and weight to such harm. The Framework advises that this harm must be weighed against the public benefits of the proposal. The development would provide a family home that would add to the local housing supply and provide economic benefits during its construction and following its occupation. There would also be some environmental benefits through the introduction of a wildflower meadow and species rich grassland. However, these benefits are tempered somewhat by the fact that the proposal would only provide a single new home and environmental benefits would be extremely localised. Consequently, the benefits would not outweigh the harmful effects of the proposal on the CA.
20. As a result, the proposal would have a significant harmful effect on the character and appearance of the surrounding area. It follows, therefore, that the proposal would fail to preserve or enhance the character or appearance of the Chelsfield Village CA. This harm is not outweighed by public benefits. The proposal is therefore contrary to Policy 41 of the BLP, Policy 7.8 of the London Plan and the associated policies of the Framework which together seek to preserve and enhance the characteristics and appearance of conservation areas through sympathetic form, scale, materials and architectural detailing.

Highway safety

21. Chelsfield Lane is a narrow country lane with a 30mph speed limit. There are no pedestrian footways. The topography of the area is such that the carriageway along the lane is of a gradient falling from southeast to northwest. Thus, the adjoining land to the northwest sits approximately 1 to 2 metres higher than the surface of the carriageway, with the highway verge comprising an embankment topped by trees and a mature hedgerow.
22. The combination of these features means that the inter-visibility between a vehicle using the proposed access to the site and users of the adjacent highway would be significantly constrained without the provision of sufficient visibility splays. To address this, the proposal includes works to remove a section of the adjacent hedgerow, trees and embankment along the north-westerly splay. The appellant identifies this as highway land, but the Council is concerned that they do not maintain this land and therefore the visibility splay cannot be sufficiently maintained.
23. Based on the evidence before me and from my own observations on site, it is clear that the removal of the embankment, hedgerow and trees, which are necessary to provide the visibility splay, would significantly impose on third party land, requiring a new field boundary and a retaining structure. In the absence of a legal agreement to secure and maintain these works, it is not certain that the visibility splays can be achieved and therefore the driver of a car would have severely restricted views along the road when exiting from the site onto Chelsfield Lane. Although the road is narrow and therefore vehicles may be passing the appeal site at relatively low speeds, the narrowness of the road limits the scope for users of the highway to manoeuvre out of the way of a vehicle entering or leaving the proposed access.
24. I have considered whether the use of planning conditions could achieve the required visibility splays. However, the Planning Practice Guidance is clear that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability³. I have also considered the use of a 'Grampian' style condition, prohibiting development until adequate visibility splays can be provided. In this case such a condition would not secure the ongoing provision and maintenance of the splays, rendering the condition unreasonable and unenforceable.
25. Consequently, the development would pose an unacceptable risk to users of the highway along Chelsfield Lane. Thus, it conflicts with Policy 32 of the BLP which seeks to ensure that new development does not have a significant adverse effect on road safety.

Archaeology

26. The site is located within the locally designated Chelsfield Village and surrounding area Archaeological Priority Area (APA) where there is significant known archaeological interest and the potential for new discoveries. The Framework states that where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological

³ PPG Paragraph: 009 Reference ID: 21a-009-20140306

- interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
27. An Archaeological Desk Based Assessment has been provided which identifies the site as having a low potential for archaeological remains from all historical periods, except the Bronze Age for which there is medium potential for archaeological remains of medium significance. Historic England (HE) has considered the content of the assessment and is of the view that, due to a lack of information to inform the assessment, the report does not accurately consider the potential for the site. HE advises that a field evaluation in the form of a geophysical survey be conducted to determine whether there is an ongoing archaeological interest.
28. Given the site's archaeological potential informed by its location within a locally designated APA, its undeveloped state, and its positioning in relation to the historic settlement of Chelsfield, I agree that the site merits further investigation. Thus, it is necessary to undertake a field evaluation to fully consider the archaeological implications of the proposal and identify any required mitigation.
29. I do not consider a pre-commencement condition to be appropriate in this regard as assessment and evaluation ought to take place prior to the determination of a planning application in order to predict the presence of remains and assess their potential significance. Without further field evaluation and assessment, it is not possible to fully consider the archaeological implications of the proposal.
30. In the absence of this information, or conversely, any convincing evidence that it should not be required, I conclude that the effect of the proposal on archaeological interests has not been shown to be acceptable. The proposal would therefore be contrary to Policy 46 of the BLP, Policy 7.8 of the London Plan and the associated policies of the Framework which together seek to protect archaeological interests.

Other considerations

31. The appellant has put forward a number of other considerations to support the proposal. Firstly, it is argued that the design of the dwelling is of an exceptionally high quality, utilising materials that would be in keeping with the rural Kentish vernacular and would reflect the highest standards of architecture. However, I have already found this not to be the case and found that the proposal would harm the character and appearance of the surrounding area.
32. It has also been put to me that there would be no harm to any protected species and that the introduction of a native wildflower meadow and areas of species rich grassland within the site would amount to substantial ecological benefits. However, given the limited scale of these environmental enhancements the benefits are likely to be highly localised and therefore attract limited weight. The absence of harm to protected species is a neutral factor.
33. I note the accessible location of the site, in close proximity to a number of services and facilities on offer in the nearby village. It is also well served by

alternative modes of transport to the private motor car with a regular bus service and nearby train services into Central London and further afield. But in the absence of harm these are neutral factors in my determination.

34. The proposal would provide an additional family home that would add to local housing supply for which there is a need. This would provide economic benefits during the construction and in the subsequent occupation of the dwelling. However, these benefits would be modest given the scale of the proposal.
35. The appellant has drawn my attention to two separate developments nearby, which the appellant considers to provide a justification for allowing the appeal proposal. Whilst I do not have the full details of these other schemes before me, I can see that one involved the conversion of an existing building⁴ and the other involved the development of previously developed land⁵. Therefore, they are not comparable to the appeal proposal and as such attract limited weight.
36. A further scheme⁶ approved on appeal in the neighbouring district of Seven Oaks has been offered as a comparable scheme. Similarly, I do not have the full details of this scheme and so cannot be certain that the circumstances are the same. The scheme is also within a different administrative area and therefore is subject to a different local policy context. In any case, I have considered the appeal proposal on its own merits.
37. Following the outcome of a recent Appeal Inquiry⁷, the Council can no longer demonstrate a five year supply of deliverable housing sites. The Council does not dispute this. In such circumstances, paragraph 11d) of the Framework advises that the policies which are most important for determining the application ought to be considered out-of-date. Accordingly, paragraph 11d)i. states that permission ought to be granted unless *'the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed'*.
38. The Framework's policies in relation to the protection of the Green Belt and heritage assets provide clear reasons for refusing the development proposed. The proposal cannot therefore benefit from the presumption in favour of sustainable development.
39. I appreciate that the appellant is from the area and wishes to remain in the village with his young family. I also acknowledge the letters of support from interested third parties. However, these matters attract limited weight.

Conclusion

40. As set out above, the development constitutes inappropriate development in the Green Belt and should not be approved except in very special circumstances. In addition, there would be a significant loss of openness and the proposal would conflict with the Green Belt purpose of safeguarding the countryside from encroachment. Substantial weight should be given to any

⁴ Local Planning Authority Ref. DC/05/01134/FULL1

⁵ APP/G5180/W/15/3136998

⁶ Seven Oaks District Council Ref. 19/00538/OUT

⁷ APP/G5180/W/18/3206569

harm to the Green Belt. The development would also have a significant harmful effect on the character and appearance of the area, fail to preserve or enhance the Chelsfield Village Conservation Area, compromise highway safety, and its effects on archaeological remains has not been shown to be acceptable.

41. Very special circumstances will not exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Having taken into account the other considerations outlined above, they do not outweigh the substantial weight which must be given to Green Belt harm and the other harm I have found and are therefore not sufficient to demonstrate very special circumstances. For the reasons given, the appeal is dismissed.

Jeff Tweddle

INSPECTOR