



Appeal Decision

Hearing Held on 15 January 2020

Site visit made on 15 January 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2020

Appeal Ref: APP/H2265/W/19/3229912

The Nursery, Taylors Lane, Trottiscliffe, West Malling ME19 5ES

- 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 C Luke against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/18/00357/OA, dated 10 January 2018, was refused by notice dated 17 April 2019.
 - The development proposed is 'erection of a detached bungalow having a floor area of 190m² to replace the mobile home.'
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Decision

1. The appeal is allowed and outline planning permission is granted for development described as outline application: erection of a detached dwelling for an agricultural worker relating to the nursery business to replace the mobile home, with landscaping reserved at The Nursery, Taylors Lane, Trottiscliffe, West Malling ME19 5ES in accordance with the terms of the application, Ref TM/18/00357/OA, dated 10 January 2018, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The circumstances of the proposals were amended during the time the planning application was under consideration by the Council. Whilst remaining one seeking outline planning permission, the sole matter reserved for future consideration was landscaping which followed the submission of additional plans detailing the appearance and layout of the proposed development prior to the Council issuing their decision.
3. At the hearing, it was agreed between the main parties therefore that the description of development as it appeared on the Council's decision notice was the most appropriate and accurate. I have considered the appeal scheme on this basis. Indeed, this is the same description that appears on the appeal form. The appeal scheme has been described as such during the time it has been deposited with the Inspectorate. With these factors in mind I am satisfied that no parties will be prejudiced by my use of a different description of development to that which was initially advanced.

Application for costs

4. With the appellant's documents, an application for costs was made by Mr C Luke against Tonbridge & Malling Borough Council. Further discussion thereof took place at the hearing. This application is the subject of a separate decision.

Main Issues

5. There are three main issues. These are:
 - Whether or not the appeal scheme would be inappropriate development in the Green Belt;
 - The effect of the appeal scheme on the openness of the Green Belt; and
 - If the appeal scheme is inappropriate development, whether the 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

Inappropriate Development

6. The appeal scheme seeks to erect a dwelling on the site of the existing mobile home. The appeal site is in the Green Belt. Policy CP3 of the Core Strategy¹ sets out that national Green Belt Policy will be applied to the area within which the appeal site is located.
7. The Framework² explains that the erection of new buildings in the Green Belt should be regarded as inappropriate development. Paragraph 145 includes a closed list of exceptions. One being the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces and limited infilling or the partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
8. Taking the replacement of buildings first, one must question whether the existing mobile home is a building for planning purposes. Whilst it has some form of fixture to the ground, connection to water and electricity, a timber skirt and a small veranda leading to an entrance door it is inherently movable and temporary by its design and intention, accordingly falling into the definition of a caravan. I therefore share the Council's conclusions that, for planning purposes, the existing mobile home is not a building and thus cannot be considered under this exception.
9. A planning permission exists for the siting of a mobile home on the appeal site on a permanent basis³. Noting that it is for a mobile home (emphasis added) and not specifically the one that is currently stationed at the appeal site. The planning permissions exists for one to be sited as approved and could reasonably be changed in the future. The planning permission effectively

¹ Tonbridge and Malling Borough Council Local Development Framework Core Strategy 2007

² The National Planning Policy Framework 2019

³ Local Planning Authority Reference TM/16/01753/FL

- establishes a land use. On this basis, as well as considering the mobile home under the definition of a caravan, any planning permission that exists for it, regardless of it being for such in perpetuity, it would not change the fact that by its nature the mobile home could not be a building for planning purposes.
10. There was discussion at the hearing as to whether the proposed development would represent the redevelopment of PDL and for that I turn to the definition thereof as it is set out by the Framework's glossary. It defines such as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. There are a number of exclusions.
 11. At the hearing the Council was able to provide a plan showing the site to which development related in respect of the planning permission granted for the permanent stationing of a mobile home. This included land around the it. The same land to which the proposed dwelling would relate. It would be reasonable therefore to conclude that the land on which the proposed development would take place would be within a curtilage. The definition of PDL for the purposes of the Framework includes land occupied by a permanent structure, not necessarily a building. Be this as it may, the mobile home by its very nature (the characteristics I have set out above) could not be considered a permanent structure despite the fact that a planning permission exists for one to be there in perpetuity. Taking the wording of the Framework's definition on face value therefore, I cannot be satisfied that the land on which the proposed dwelling would be developed could be considered PDL.
 12. I am also mindful of the relevant exception in paragraph 145 on the matter of PDL excluding temporary buildings. Putting aside the conflict in the use of words in this case with the mobile home not being a building for planning purposes, it seems sufficiently clear that this exception should not apply to the appeal site.
 13. Taking the above factors into account, the appeal scheme would be inappropriate development in the Green Belt. As per paragraph 143 of the Framework, it would be harmful to the Green Belt by definition. Paragraph 144 goes on to state that substantial weight is given to any harm to the Green Belt. '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. I shall return to this later.

The Openness of the Green Belt

14. The essential characteristics of the Green Belt are its openness and permanence. It has been established that openness has both a spatial and visual aspect, the former being taken to mean the absence of built form.
15. In terms of the effect of the proposed development on the spatial aspect, there would be an unavoidable reduction in the openness of the Green Belt albeit purely by virtue of the proposed dwelling being larger than the existing mobile home. It would be taller, longer and wider. That said, the site of the proposed dwelling would be somewhat obscured from the public realm by boundary vegetation on the road edge. It would also be well within the wider site, against and amongst other buildings of a not insignificant scale in themselves. There are other mature trees in the site and a substantial timber fence

separating the it from the agricultural fields beyond. There would therefore be a limited to negligible effect on the visual aspect of the Green Belt's openness. Whilst the context of the appeal site in built form terms would accordingly allow some of the spatial reduction in the Green Belt's openness to be absorbed there would remain some limited harm in this respect. This would be as well as the harm arising out of the inappropriateness of the appeal scheme.

Other Considerations

16. It seemed sufficiently clear from the written evidence, the planning history of the appeal site and discussion at the hearing that the existing mobile home could be replaced. Indeed, it could be replaced by something larger provided it fitted within the definitions of a mobile home/caravan. This in itself would have an unavoidable reducing effect on the openness of the Green Belt. An effect that the Council would unlikely be able to reasonably prevent. This therefore constitutes a fall-back position.
17. Whilst the appeal scheme's building would be larger than the existing mobile home, I would not consider it disproportionately so given what it is trying to achieve. The appellant is one of a family of six occupants and the appeal scheme proposes a modest three bedroom dwelling, compactly arranged over a single storey with rooms in its roof space. It would not sprawl or increase the height of the existing mobile home excessively, given also its situation amongst other buildings ensuring the built form remains clustered and well knitted. A permanent dwelling would also represent an improvement in visual terms, particularly in regard to the use of higher quality and longer lasting materials and finishes.
18. A permanent building on the appeal site would be more energy efficient and thus reduce the existing mobile home's strain on demand which has the potential to have wider environmental benefits. Ventilation and insulation improvements could also have benefits for the long term health of occupants. In addition, and should I dismiss the appeal, the appellant would likely have to explore the replacement of the mobile home in due course, perhaps doing so again when any replacement reaches the end of its operational life. Such an approach would be far less environmentally sustainable than the erection of a permanent building which would only require a more basic level of maintenance.
19. The appellant explained at the hearing that a member of the immediate family currently residing at the mobile home experiences mobility difficulties, particularly those associated with climbing stairs and changing levels. It strikes me that a mobile home with stepped access to the front door, narrow corridors and confined spaces would not be conducive to a comfortable experience for this individual. The proposed dwelling would provide a bedroom on the ground floor and level access. This can only be an improvement in quality of life terms for the individual, as well as reducing stress for other family members.
20. The Council granted a planning permission for the permanent stationing of a mobile home on the appeal site and as such there is a general expectation in planning and Green Belt terms that there would, subject to the continuation of the appellant's business, be an entity providing for a dwelling on the site in perpetuity. There seems to be some illogical conflict therefore in terms when considering whether, for the purposes of the Framework, the appeal scheme

would be a replacement building. One could legitimately argue however it remains a replacement dwelling regardless.

Other Matters

21. The Council note the location of the appeal site within the Kent Downs Area of Outstanding Natural Beauty (AONB), accordingly referring to paragraph 172 of the Framework. On this matter I share their conclusions that, owing to the location, scale, context and design of the proposed dwelling it would not adversely affect the landscape or scenic beauty of the AONB.

Conditions

22. In the interests of certainty and for clarity and enforceability, I have imposed the relevant conditions concerning the timescales for the commencement of development, the submission of the reserved matter and the approved plans.
23. I have imposed a condition limiting the occupancy of the dwelling. This is because not only would planning permission not normally be granted for unrestricted dwellings in such locations but also that the principle of a dwelling (mobile home) on the site was approved on the basis of there being a justification for workers employed by the business to live on site. I have taken the wording suggested by the Council and continued reference to the associated nursery business given that was the original need that justified the dwelling. I have also added 'last employed' which allows for the occupant to remain in the dwelling should they retire from working and not effectively be homeless in the event they did.
24. A condition requiring the removal of the mobile home from the site has been attached. This is to restrict there being two dwellings on the appeal site. The wording I have used reflects discussion at the hearing as to a reasonable timescale therefore.
25. I have imposed, in the interests of ensuring a suitable external appearance to the proposed development and recognising its location, a condition requiring the submission of samples of materials. Since this goes to the heart of the planning permission, such detail needs to be submitted and agreed prior to works taking place. I have taken the lead from the Council's wording that development up to ground level can be undertaken prior to such details being agreed. In the interests of the proper functioning of the proposed development and reducing parking on the narrow highway I have attached conditions requiring foul water to be disposed of directly into the main sewer and parking to be laid out, appropriately drained and retained for use as such in accordance with details to be agreed. It would be sufficient for this to be so prior to the first occupation of the dwelling since it is not shown in sufficient detail on the approved plans.
26. Since details pertaining to existing and proposed ground levels, in relation to finished floor levels, have not been submitted, these have been requested to ensure the eventual height of the building is not excessive in the interests of its effect on the Green Belt. This detail needs to be agreed prior to any development taking place given what it seeks to establish and it being intrinsically linked to physical works.
27. No lighting is proposed with the appeal scheme but given the sensitivity of its location and the proximity of other residential uses, details of any proposed

should be first agreed with the Council. I have removed rights for works permitted to take place without the need for express planning permission on a selective basis, referring to classes of the GPDO⁴ concerned with the addition of built volume in the interests of reducing the future effect of the scheme on the Green Belt.

Conclusion

28. The harm to the Green Belt by virtue of its inappropriateness is so albeit I recognise there is some illogical conflict in this regard as I have explained above and with respect to the particular circumstances of this case. The further harm to openness would be mainly in spatial terms and accordingly, as I have explained, be reduced by the context of the appeal site in built form terms. There would also be some additional harm arising out of conflict with the development plan which, in ascribing weight thereto, would only be so since it effectively defers to the national policy position on development in the Green Belt.
29. I am required, in regard to the finding of harm to the Green Belt in more than one respect in this case, assess whether it is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it. Noting that substantial weight be given to any harm, regardless of its level. Whilst the circumstances I have set out above may carry small to moderate weight on their own, when taken together I find them persuasive and thus worthy of sufficient weight to tip the balance in favour of the appeal scheme. Consequently, and in regard to the particular merits of the case before me, they would amount to the very special circumstances which justify it. The appeal is therefore allowed, subject to the conditions set out in the attached schedule.

John Morrison

INSPECTOR

⁴ The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

APPEARANCES

FOR THE APPELLANT:

Mr Charles Luke	Appellant
Mrs Pearl Luke	Appellant
Mr Graham Simpkin	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr John Escott	R E Planning LLP
Mrs Anne Kemp	Local Ward Member
Mrs Rebecca Jarman	Tonbridge and Malling Borough Council

DOCUMENTS SUBMITTED

- Additional costs information from the appellant
- Plan showing land to which planning permission TM/16/01753/FL related

SCHEDULE OF CONDITIONS

- 1) Details of the landscaping (hereinafter called "the reserved matter") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matter shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Development shall be carried out in accordance with the following approved plans, drawing reference 1786/1 rev A; 1786/19 rev A; 1129/2 A; 1129/3 A and 1129/1 B.
- 5) The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly working, or last working, in the associated nursery business or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
- 6) Within one month of the first occupation of the dwelling hereby permitted the existing mobile home shall be removed from the site.

- 7) No development shall take place above ground level until samples of all external facing materials have been submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved samples.
- 8) Any foul water discharge from the dwelling hereby permitted shall be disposed into the mains sewer.
- 9) Notwithstanding the details shown on the plans hereby approved and prior to the first occupation of the dwelling hereby permitted, the areas for the parking of vehicles shall be laid out, surfaced and drained in accordance with details to be first submitted to and approved in writing by the local planning authority. They shall then be retained for use only as vehicle parking for the life of the development hereby permitted.
- 10) Notwithstanding the details shown on the plans hereby approved and prior to any development taking place, details of the proposed finished floor levels of the dwelling hereby permitted in relation to the existing and proposed finished external ground levels shall be submitted to and approved in writing by the local planning authority. Development shall then be carried out in accordance with the approved details.
- 11) Details of any external lighting proposed shall be first submitted to and approved in writing by the local planning authority prior to it being installed. Development shall then be carried out in accordance with the approved details.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development shall take place under Classes A, B, D or E of Schedule 2, Part 1 unless expressly authorised by this planning permission.