



Appeal Decision

Site visit made on 17 March 2020

by Christopher Butler BA(Hons) PG Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2020

Appeal Ref: APP/P1940/W/19/3229189

Glenwood, Harthall Lane, Kings Langley WD4 8JN

- 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 Kedgling Developments Ltd against the decision of Three Rivers District Council.
 - The application Ref 19/0162/OUT, dated 23 January 2019, was refused by notice dated 27 March 2019.
 - The development proposed is an outline application (with all matters reserved) for the construction of up to five residential dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Kedgling Developments Ltd against Three Rivers District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The submitted appeal form specifies Mr Finn Hitchcock of FH Planning Services as the appellant, whilst the planning application form submitted with the planning application stated the applicant was Kedgling Developments Ltd. Clarification on this matter was sought and it has been confirmed that the applicant and appellant is Kedgling Developments Ltd. I have considered the appeal on this basis.
4. The proposal is in outline and the submitted application form indicates all matters of detail are reserved for future determination. However, the submission is accompanied by an illustrative plan that shows how the site could be laid out and includes some idea as to how access into the site and landscaping could be achieved. Whilst being an illustrative plan it provides a good idea of how the site could potentially be developed and I have had regard to it.

Main Issues

5. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the development plan and the National Planning Policy Framework (the Framework);

- The effect of the development on the character and appearance of the surrounding area;
- Whether the development without any affordable housing provision is reasonable given the viability of the proposed scheme, in light of development plan policies, the Framework, and other related guidance; and
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

6. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to safeguard the countryside from encroachment and prevent urban sprawl by keeping land permanently open, as the essential characteristics of Green Belts are their openness and their permanence.
7. The Council's decision notice, in addition to the Framework, refers to Policy CP11 of the Three Rivers District Council Core Strategy 2011 (CS) and Policy DM2 of the Three Rivers District Council Development Management Policies Local Development Document 2013 (DMPLDD). Policy CP11 refers, amongst other things, to a general presumption against inappropriate development that would not preserve the openness of the Green Belt, or which would conflict with the purpose of including land within it. Policy DM2 sets out a number of criteria for development within the Green Belt, including a criterion relating to new buildings which links back to national policy. However, neither policy makes direct reference to infilling in villages. As such, neither policy is wholly consistent with the Framework.
8. Paragraph 145 e) of the Framework allows for limited infilling in villages. It is the appellant's view that the proposal is not inappropriate by virtue of this exception. I also note that whilst the Council conclude the development to be inappropriate development in the Green Belt, they consider the site to be in a village. Bearing in mind Paragraph 145 e) of the Framework, I shall consider whether (1) the appeal site is within a village, and (2), if required, whether the proposal represents limited infilling. Caselaw indicates that this is essentially a question of planning judgement¹.
9. The appeal site lies outside the settlement boundary of Kings Langley, nor does it lie within any of the other settlement boundaries, as defined by the Development Plan. However, this is not necessarily determinative, given the relevant case law mentioned above, as to whether it is within a village for the purposes of paragraph 145 e) of the Framework.
10. To the west, from the railway and beyond, Kings Langley has an urban feel. However, as you drive east, away from Kings Langley, under the railway along Harthall Lane the character of the area becomes one of a semi-rural verdant

¹ R(Tate) v Northumberland CC [2018] EWCA Civ 1519 and Julian Wood v SSCLG and Gravesham Borough Council [2015] EWCA Civ 195.

road, which comprises linear development on both sides up to and passed the access road that leads to the development site. However, as you access the site from Harthall Lane, the road rises to the south and whilst there are residential properties either side of this road/trackway, the further you travel south along it the more spacious and open the area becomes. Indeed, there is a palpable change in character from the linear development in Harthall Lane, which has a semi-rural character to the character of the development site and its immediate surroundings, which has a notable countryside feel to it. In this regard the appeal site notably differs from the linear development that runs along Harthall Lane to the north of the site and the housing in the settlement of Kings Langley, located beyond the railway, west of the site.

11. Whilst there are residential properties adjoining the site, due to the sizes of those residential plots and the nature of the development within them there are notable gaps that are free from built form. The land surrounding the bungalow on the appeal site is spacious and also provides notable gaps between the dwelling on site and adjoining properties. As a result, this development site and the immediately surrounding area is experienced as a distinct component separate from the linear development that runs east/west along Harthall Lane or the more urban development within the settlement boundary of Kings Langley, as defined by the development plan, located some distance to the west of the development site.
12. The appellant refers to properties on the Lower Road and bottom of Hyde Lane being similar in road layout to that of Harthall Lane. They also point to Hyde Lane being further away from nearly all the local amenities/services than the development site. In terms of the road layout being of a similar character, I do not agree. Lower Road has a more urban built up nature and form and whilst Hyde Lane becomes narrow the Council's Development Plan recognises this part of Lower Road and bottom of Hyde Lane as within the settlement boundary of Kings Langley. In regard to the proximity of local amenities/services to the development site, I shall deal with this matter later in my decision.
13. Due to the surrounding pattern of development, my observations lead me to find that the development site does not form part of the linear development that runs east/west along Harthall Lane, nor does it form part of the settlement located west of the railway line. As such, irrespective of the assertion that the development is infilling, the site lies beyond the village edge and is not located in a village. Therefore, the development proposal does not accord with Paragraph 145 e) of the Framework.
14. The proposal also stands to be considered under Paragraph 145 g) of the Framework which allows the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings). This exemption is subject to two criteria, the first of which is that it would not have a greater impact on the openness of the Green Belt than the existing development. The other criteria is not relevant in this instance as no evidence has been presented that suggests the proposed development would contribute to an identified affordable housing need within the area of the local planning authority.
15. As the site is not within a village and none of the other exclusions of 'Previously Developed Land' (PDL) apply, as defined by Annex 2 of the Framework, it is

clear to me that the existing bungalow on the site and its immediate curtilage would fall within the definition of PDL. Whilst I appreciate that this submission has been made in outline, the illustrative plans provide a good indication of how the site could potentially be developed. It is clear to me that the provision of five new dwellings on the site, would significantly increase footprint and built form over and above that which currently exists.

16. Due to the topography of the site, the existing bungalow is set into the site and the height of the building is limited. As a result, the existing property is not prominent. However, irrespective of whether bungalows, chalet bungalows or housing are provided, it is clear that the amount of development that would result is going to be greater than what exists at present. This would considerably increase the prominence of built form on the site, as well as the amount of domestic paraphernalia. In addition, the development would reduce the openness of the site both visually and spatially.
17. For the reasons set out above, I conclude that the development will result in a greater impact on openness of the Green Belt than the existing development. Therefore, the development proposal does not accord with Paragraph 145 g) of the Framework.
18. From the information before me, I have no reason to believe the proposed development would meet any of the other exceptions set out in Framework paragraphs 145 and 146 and therefore the proposed development would amount to inappropriate development in the Green Belt. It would also conflict with two of the purposes of the Green Belt set out in paragraph 134 of the Framework, these being assisting in safeguarding the countryside from encroachment and preventing urban sprawl by keeping land permanently open.
19. As such, for the reasons outlined the development at large would be inappropriate development in the terms of the Framework. The proposal would therefore conflict with the Framework and be contrary to Policy CP11 of the CS and Policy DM2 of the DMPLDD, which requires that the Green Belt is maintained in the district with a general presumption against inappropriate development that would not preserve the openness of the Green Belt or would conflict with the purpose of including land within it.

The effect of the development on the character and appearance of the surrounding area

20. The appeal site is a generously sized plot of land located in an area with a distinct countryside feel. The proposed dwellings would be set appreciably away from existing neighbouring dwellings, which are also on generously sized plots of land, and would intensify the use of the site, increasing the extent of built form and impact on the countryside setting within which it is located.
21. When viewed from the track that leads to the site and the nearby Public Right of Way (PRoW), the appeal site does not appear as part of the built form of Harthall Lane to the north or Kings Langley to the west, but instead is viewed against the more rural and existing countryside setting it lies within. The proposed dwellings would be clearly visible from the track to the front of the site and the PRoW and their introduction would change the character of this part of the rural/countryside appearance of the area to a more built-up residential type development with a subsequent urbanising effect. As such, the development would appear as alien and incongruous development protruding

into the countryside rather than a development associated with the built form of Harthall Lane or Kings Langley.

22. Whilst the proposal would make a more efficient use of the land with the provision of an additional four dwellings (five dwellings in total), this would represent encroachment of urban development into the open countryside at the expense of maintaining the area's prevailing rural character and countryside appearance. This would be contrary to the policy approach set out in the Framework.
23. I conclude that the proposal would result in an incongruous form of development which would be harmful to the character and appearance of the countryside and the setting of this part of Harthall Lane and Kings Langley in general. It would therefore be contrary to Policies CP1 and CP12 of the CS and Policy DM1 of the DMPLDD. It would also fail to accord with the objectives of the Framework in this respect.

Affordable housing

24. CS Policy CP4 seeks 45% of all new housing to be affordable. For small sites of between one and nine dwellings the policy indicates commuted payments towards provision off site, as an alternative to on-site provision, can be made. As an exception to this affordable housing requirement the policy indicates that site circumstances and financial viability, along with other factors, may influence the percentage of affordable housing sought. However, it is clear that applicants should submit evidence that support non-compliance with the requirements of the policy.
25. Nevertheless, the Framework indicates that the provision of affordable housing should not be sought for residential developments of less than 10 dwellings, other than in designated rural areas, where policies may set out a lower threshold of 5 units or fewer.
26. The Council's evidence sets out the acute need for affordable housing in the area and the importance of small sites in contributing to the provision of such housing. They also highlighted a large number of recent appeal decisions for small residential schemes where it has been considered that the exceptional local need should outweigh government policy, as set out in the Framework.
27. Despite the appellant's evidence, which included reference to a Local Plan Consultation Document (October 2018) and an analysis undertaken by them based on the Council's Housing Land Supply Update (December 2018), it was clear to me, in the light of all the evidence before me, that a pressing need for affordable housing in the area remains. It was also clear that small sites play a key role in ensuring this provision. As such, in this case, I am satisfied that although considerable weight should be given to the Framework, it does not outweigh the development plan policy.
28. The appellant has stated they have not indicated that they could/would not contribute to affordable housing, if it was a requirement to make the scheme acceptable, but consider that this is a matter which would be dealt with at the reserved matters submission stage. However, where outline planning permission is being sought, contributions to affordable housing, and any other similar contributions, need to be secured as part of that outline planning consent. This is due to the fact that a reserved matters submission is not one

for planning permission, but rather details of the reserved matters required pursuant to the original outline planning permission that has already granted the principal of the development, subject to various conditions. To endeavour to secure such matters at the reserved matters stage would be completely outside the scope of the original permission.

29. The requirement for an affordable housing contribution as set out in the above policy is necessary to the acceptability of the development, is directly related to it, and is fairly related in scale and kind. As such it would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the tests for planning obligations set out in the Framework. Annex N of the *Procedural Guidance - Planning Appeals – England (January 2020)* is clear that any form of planning obligation should be submitted with the appeal documentation.
30. I have considered whether a planning condition requiring the appellant to enter into a planning obligation would make the development acceptable. However, the proposed development is neither complex nor strategically important, and there is no clear evidence that the delivery of the development would be otherwise at serious risk. It does not meet the exceptional circumstances for a negatively worded condition as set out in the Planning Practice Guidance².
31. Without any mechanism before me which would secure affordable housing or relevant commuted payments towards provision off-site, I am not satisfied that the proposed development would make adequate provision for affordable housing.

Other Considerations

32. In regard to local amenities and services, the proximity of the site to the settlement boundary of Kings Langley and the linear development along the Harthall Lane is such that I do not consider that the site would be physically isolated. The facilities and services within Kings Langley are some distance away, but technically within walking distance. However, pedestrian access would have to be gained via one of two ways, either via Harthall Lane or via the PRoW.
33. The PRoW is narrow in parts, unlit and at the time of the site visit muddy in places. Furthermore, the PRoW leads through a tunnel under the railway. This tunnel is not particularly welcoming being low in height, narrow and dark. It has an unkept appearance and graffiti on the walls. The alternative route into Kings Langley would be along the access/trackway fronting the site and Harthall Lane. This is a 30 MPH road and, whilst the road is lit, there is no pavement along it until you get near its end at the road junction with Primrose Hill/Railway Terrace in Kings Langley. Before reaching the pavement pedestrians would have had to negotiate the rail tunnel Harthall Lane runs through. Bearing in mind the nature of both routes, it is unlikely that pedestrians would see either as attractive routes, particularly in inclement weather or when it is dark.
34. I am mindful that the Framework advises that all aspects of sustainability should be considered in planning decisions, that local circumstances should be taken into account, and that opportunities to maximise sustainable transport

² Planning Practice Guidance paragraph 010 Reference ID: 21a-010-20140306

- solutions will vary from urban to rural areas. However, the proposal would not promote a choice in alternative forms of transport and the occupiers of the development would be heavily reliant on private motor vehicles, as opposed to more sustainable modes of transport to reach day to day facilities and services. Consequently, the proposal would not accord with Policy CP1 of the CS, which among other objectives seeks to ensure sustainable development patterns and would fail to meet the accessibility objectives of national planning policy.
35. The proposed development would result in a net addition of 4 residential units and it is indicated that all the dwellings proposed would be built to modern, energy efficient standards. This would make a small contribution to the supply of housing and the government's aim to significantly boost housing. However, the provision of 5 dwellings in total would have a negligible impact in this regard. As such, I afford limited weight to this benefit.
36. Economic and further social benefits would be provided through construction related employment, and investment in the local economy following occupation of the development, including CIL payments. However, the benefits arising from the construction related employment would be modest and short lived and thus a matter of limited weight. The investment in the local economy following occupation of the development would also in my view be a benefit attracting limited weight, as five dwellings would be unlikely to result in more than limited investment in this regard. In terms of the CIL payment this would amount to meeting the infrastructure requirements needed to support the development and would not, in my view, amount to a benefit attracting more than limited weight.
37. The appellant has also highlighted that the proposal would attract New Homes Bonus (NHB). However, as Section 70 of the Town and Country Planning Act 1990 (as amended) does not refer to this as "local finance considerations", I give very little weight to the development attracting the NHB.
38. My attention has been drawn by the appellant to a number of other appeal decisions. I have considered these appeals, but note they conclude the developments to which they relate amount to limited infill within a village. I have not found that to be the case in relation to this appeal and as such I do not consider them to be directly comparable to the appeal site. Therefore, I have attributed limited weight to these examples in my determination of this appeal and I have determined the proposed development before me on its individual merits.

Planning Balance and Conclusion

39. I have found that the proposed development amounts to inappropriate development in the Green Belt, which would by definition be harmful to it. It would also cause harm to the openness of the Green Belt, and conflict with more than one of the purposes of the Green Belt.
40. National policy is clear that substantial weight should be given to any harm to the Green Belt and 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.
41. In addition to the above, the development would be harmful to the character and appearance of the countryside and the setting of this part of Harthall Lane

- and Kings Langley in general and would also result in development where future occupiers would be heavily reliant on private motor vehicle journeys.
42. Whilst I have given weight to the factors cited in the schemes favour, even when taking these matters cumulatively, they do not clearly outweigh the totality of harm the scheme would cause.
43. As such, very special circumstances to justify the inappropriate development do not exist.
44. The Council's Written Statement accepts that a deliverable five-year housing land supply cannot be demonstrated. The appellant states that the supply is 3.7 years and this has not been disputed by the Council. The presumption in favour of sustainable development as set out in paragraph 11 d) of the Framework is therefore engaged. Nevertheless, in accordance with paragraph 11 d) i), as the proposal would be contrary to Green Belt policies in the Framework this provides a clear reason for refusing the development despite the deficiency in the housing land supply.
45. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found conflict with saved policies CP1, CP4, CP11 and CP12 of the CS and Policies DM1 and DM2 of the DMPLDD and therefore consider that the proposal conflicts with the development plan as a whole, as well as the Framework.
46. The development is therefore unacceptable for the reasons set out above and accordingly the appeal should be dismissed.

Christopher Butler

INSPECTOR