
Appeal Decision

Site visit made on 17 August 2020

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 16th September 2020

Appeal Ref: APP/D1265/W/20/3251279

The Orchard at Lismore, Dogdean, Colehill, Wimborne, Dorset BH21 4HA

- 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 Alessandra Savoca and Wesley Taylor against the decision of Dorset Council.
 - The application Ref 3/19/1169/OUT, dated 22 May 2019, was refused by notice dated 22 October 2019.
 - The development proposed is the erection of a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. On 1 April 2019, East Dorset District Council merged with West Dorset District Council, Purbeck District Council, North Dorset District Council and Weymouth and Portland Borough Council to become Dorset Council. The development plans for the merged local planning authority remain in place for the former area of East Dorset until such a time as they are revoked or replaced. It is therefore necessary for me to determine this appeal with reference to policies set out in the plans produced by the now dissolved East Dorset District Council.
3. The application was made for outline planning permission with all matters reserved for subsequent approval. I shall therefore deal with the indicative scheme as being for illustrative purposes only.

Main Issues

4. The main issues are:
 - Whether the proposal 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 on the openness of the Green Belt;
 - The effect of the proposal on biodiversity; and
 - If the development is inappropriate, whether the harm by reason of inappropriateness, together with any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the proposal.

Reasons

Inappropriateness

5. The site is located within the Green Belt where paragraph 145 establishes that new buildings are inappropriate development unless they fall within a list of stated exceptions. Whilst listed exceptions include development comprising limited infilling in villages the site is part of a small group of properties at Dogdean, the closest village is around half a mile away at Furzehill to the north which this site is physically separated from. It is also just over a mile from Wimborne and Colehill.
6. The appellants argue that the proposal would be infilling. The Framework does not contain any definition of 'limited', 'infilling' or 'village'. I note the appellants reference to the Braintree judgement¹ which identified that an assessment of the immediate context of a site, based on the circumstances of the individual case, is required when considering whether or not a site is judged to be within a village. Whilst the appeal site is part of a gap between properties the site is within one of several dispersed groups of dwellings. The lane at Dogdean connects the appeal site to the village located to the north. Nonetheless, there is a clear break between the group where the appeal site is located and the denser, more continuous frontage development found in the village. From what I have seen and read the appeal site is clearly within the open countryside and not part of the village of Furzehill.
7. Although there are several properties outside the settlement, the site is clearly separate and distinct from the village. Whilst the site is not isolated in the context of paragraph 79 of the Framework for the above reasons the exception provided by paragraph 145e of the Framework does not apply.
8. The appellants argue that the site can be regarded as previously developed land to which the provisions of paragraph 145 g) apply. This provision allows for the limited infilling or the partial or complete redevelopment of previously developed sites (sometimes known as brownfield land). This is however caveated in that development should not have a greater impact on the openness of the Green Belt than the existing development **or** would not cause substantial harm to the openness of the Green Belt and where the development would contribute to meeting an identified affordable housing need. As neither of these criteria would apply that provision is not relevant to my consideration of this appeal site.
9. The appellants state that the dwelling would not interrupt the rhythm of development in this location and the site is not a severance plot in the true sense of the term, However, this is not the test for development within the Green Belt for which specific criteria apply. The appellants further argue that it would not lead to urban sprawl. The cumulative effect over time of development of this type, if repeated often, would significantly erode the openness of the Green Belt leading to an urbanising effect. These are factors which the Framework seeks to guard against.
10. Taking all of the above into account, the proposal would represent a new building in the Green Belt which would not fulfil any of the exceptions set out in

¹ Braintree District Council v Secretary of State for Communities and Local Government [2017] Judgement EWHC 2743 (Admin)

the Framework. Consequently, it would conflict with the Framework and Policies HE2 and HE3 of the Christchurch and East Dorset Core Strategy. (Part 1) (2014) (the Core Strategy). Accordingly, it would be inappropriate development in the Green Belt that is, by definition, harmful and should not be permitted except in very special circumstances, a matter to which I will return.

Openness

11. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It identifies openness as an essential characteristic of the Green Belt. There is no definition of 'openness' in the Framework, but it is commonly taken to mean the absence of built or otherwise urbanising development rather than being primarily about visual effects.
12. In physical terms the land is predominantly orchard with planted boundaries. There is a small green house and a number of chicken coops though these are small scale and not visually apparent other than at the gate to the site. The site is amongst an irregular ribbon development of buildings along Dogdean where the character is predominantly rural with fields to the north west and south east. Consequently, the development surrounding the appeal site is experienced within the rural context of the countryside beyond and reinforces the positive undeveloped nature of the spaces in and around the appeal site.
13. The site is devoid of any built form other than the lightweight structures of the chicken coops and the greenhouse. The addition of a building of the size necessary to accommodate a dwelling would inevitably reduce openness in the Green Belt and represent an urbanising effect. The spacing between the host building and the neighbouring property would also be materially eroded and would lead to an increased density of development which would have an adverse impact on the openness of the immediate area and the contribution it makes to the Green Belt.
14. Taking these factors into account there would be a harmful effect on openness in the Green Belt. Whilst that effect would be local and limited it would nonetheless be permanent and would compromise the objectives of the Framework in keeping Green Belt land permanently open.

Biodiversity

15. The appellants have provided in evidence a report which argues that a biodiversity report is not necessary as it does not meet the criteria set out in the Dorset Biodiversity appraisal protocol guidance for consultants. Moreover, the earlier refusal on the site did not raise biodiversity as a reason for refusal. That may be so, but the Council outline the circumstances for this submission based on the advice given from their statutory consultee which advises that there is a requirement for a Biodiversity Mitigation and Enhancement Plan for this type of development. Based on the evidence before me I am not able to conclude that there would not be any adverse impact on biodiversity and in the absence of evidence to the contrary the proposal would conflict with Policy ME1 of the Core Strategy and guidance contained within the Framework².

² paragraph 175

Other Considerations

16. Very special circumstances to justify inappropriate development 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.
17. The appellants set out what they consider to be the very special circumstances which should be considered. These include the lack of a five-year supply of housing in this area, a fact which is not in dispute between the Council and the appellants. Nonetheless the Framework (in paragraph 11) provides that in circumstances where the policies which are most important for determining applications are out of date that planning permission should be granted, this is however qualified by Footnote 6 to paragraph 11 which disapplies that provision in certain circumstances including within land designated as Green Belt. The presumption afforded by the tilted balance would not apply in circumstances where Green Belt policies provide clear reasons to resist inappropriate development as is the case here. The tilted balance has therefore minimal weight in relation to this appeal.
18. The appellants argue that the site is previously developed land due to its historical use. However, I have no evidence to corroborate past uses of the site nor any evidence that the site benefited from any lawful use which would alter my findings. I have no evidence that the site has been part of the cultivated garden at Lismore. Indications on site suggest that the site was formerly an orchard though the appellants say that it is not agricultural land having been used for numerous alternative uses in the past including: a lorry park; an area for car and caravan parking; for the keeping of poultry and for family parties. However, I have not been provided with any evidence as to any definitive use of the land. Whilst aerial photographs referred to indicate the presence of some structures in 2005, I have nothing conclusive before me in this regard. I can therefore afford this information minimal weight in reaching my decision.
19. The appellants emphasise the important contribution which small sites can make to satisfying the housing supply; not least because they are normally built out promptly. The contribution to the local housing supply which would be afforded by the addition of a single dwelling would be small and would lend only a modest amount of support for the scheme.
20. It has been argued by the appellants that to deny infilling when hundreds of homes are being erected in the green belt so close to the site is deemed inconsistent decision making. I saw that there is new housing development closer to Wimborne however this appeared to be part of a much wider planned development and was in any case closer to the main settlement not subject to Green Belt designation. In any event each case must be treated individually on its own merits and I have come to my decision based on the evidence before me as it applies to this site.
21. The appellant argues that the site could be developed to erect a large annexe under permitted development rights. The theoretical amount by which any permitted development right could be exercised is unclear as there is lack of clarity as to whether this land enjoys such rights. As I have no substantive evidence to indicate that there is a significant probability that structures of this magnitude would be constructed should this appeal be dismissed it limits the weight that I can attach to it as a fall-back position.

22. It has been highlighted that there would be no impact on neighbours or highway concerns however as the scheme is in outline, I cannot be certain what the impact would be on the adjacent property. The lack of highway objection is a neutral factor weighing neither for nor against the appeal scheme.

Other Matters

23. The appellants draw attention to lack of requirement for a biodiversity appraisal and presents in evidence the previous decision notice. I note that the 2018 proposal was indicated as having been located within 5km of a number of Sites of Special Scientific Interest (SSSIs) of international importance, some of which are part of the designated Dorset Heathlands SPA (Special Protection Area), and also part of the Dorset Heaths SAC (Special Area of Conservation) and RAMSAR sites. The consequence of such proximity to these European sites (SPA and SAC) would mean that the determination of the application should be undertaken with regard to the requirements of the Conservation of Habitats and Species Regulations 2010. Although the Council have not raised this proximity for this application. Had I been minded to allow the appeal I would have had to consider the implications of the development on the SPA and SAC sites.
24. My attention has been drawn to a recently allowed appeal close to the appeal site. Whilst the Inspector in that case described the buildings in the ribbon development to be well spaced, and that the surrounding land comprised open agricultural fields, that appeal was for an enlargement to an existing building. It is not comparable with, nor would it support the principle of the construction of a new dwelling to which different policy considerations apply.³
25. A further appeal decision⁴ has been referred to which touches on the issue of limited infilling. I note that case refers to a site which forms part of the town of Leighton Buzzard where the surroundings appear to exhibit different characteristics. Locationally different circumstances between that case and this appeal do not alter my findings.
26. General reference is also made by the appellants regarding numerous cases which have been accepted in relation to paragraph 145(e). The cases referred to are not referenced in detail, however as I do not regard this site to be within a village those comparisons are of limited relevance.
27. A local resident has expressed support for the development stating that the site is only a short distance from a new housing estate and expresses wholehearted support for the scheme. The context of this site is different to the housing estate referred to and the comparison does not alter my conclusion.

Green Belt Planning Balance

28. The Framework advocates that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In this case, the proposal amounts to inappropriate development, and in addition, limited

³ Paragraph 145 of the Framework

⁴ APP/P0240/W/18/3196341

harm would be caused to the openness of the Green Belt. These factors attract substantial weight. There would also be potential harm in respect of biodiversity.

29. Balanced against that harm are the other considerations discussed above. However, even when considered together, these do not clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist. Therefore, the proposal would be contrary to the provisions of the Framework and to Policies HE2, HE3 and ME1 of the Core Strategy which seek to protect the open countryside and the Green Belt from inappropriate development and to safeguard biodiversity.

Conclusion

30. For the reasons set out, and having regard to all other matters raised the appeal is dismissed.

Janet Wilson

INSPECTOR