
Appeal Decision

Site visit made on 6 October 2020

by Jan Hebblethwaite MA Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 04 November 2020

Appeal Ref: APP/A1720/W/20/3251962

Westering, Posbrook Lane, Titchfield, Fareham PO14 4EY.

- 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 Mr G Uffendell against the decision of Fareham Borough Council.
 - The application Ref P/19/1319/FP dated 16 December 2019, was refused by notice dated 20 February 2020.
 - The development proposed is to sever land and erect a detached bungalow with parking and shared vehicular access
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The main issues in this appeal are:
 - a) whether the proposed development would be contrary to policies which seek to protect the countryside and the character of the surrounding area;
 - b) whether the proposed development is contrary to the policies which seek to protect European Protected Sites and the Solent Waters Special Protection Area; and
 - c) whether there are any other material considerations, including the housing land supply position and the benefits of the proposed development which would mean that the proposal should be determined otherwise than in accordance with the development plan.

Reasons

Development in the Countryside

3. The proposed development is the erection of a bungalow in the rear garden of an existing detached property (Westering). The development site is located outside the defined boundary of the settlement of Titchfield and although there are buildings (including dwellings) in the vicinity, the surrounding land generally consists of open fields. Westering sits in a large plot and is a detached house of traditional appearance, with brick and rendered walls.
4. Policy CS22 of the Fareham Local Development Framework; Core Strategy ("FLDF") identifies land to be considered "countryside" as land within a

Strategic Gap. Both parties agree that the development site is within the Meon Gap and that the site is located within the countryside under Policy CS22.

5. Paragraph 79 of the NPPF¹ states that *"... decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply."* There is some dispute between the parties as to whether the proposed development would be an "isolated home". The Council considers that it would be isolated in the sense that it is outside the settlement boundary of Titchfield and is some distance from the settlement's closest boundary. The Appellant considers that because there is an existing dwelling, the new dwelling would not be isolated. The Appellant refers to the Dartford case² which involved proposed development within an existing residential curtilage in the Green Belt. The Court found that the site was "previously developed land"³. Therefore, the proposal was an exclusion from the principle that the construction of new buildings in the Green Belt is inappropriate.
6. The Court also considered whether there was a conflict between the definition of "previously developed land" and paragraph 55 of the version of the NPPF in force at the date of the judgment. That paragraph was a precursor to paragraph 79 in the current NPPF although it was subtly different:

Local Planning authorities should avoid new isolated homes in the countryside unless there are special circumstances.....

The Court concluded that *"...the definition of previously developed land, in the context of the present case, takes as its starting point that the proposed development is within the curtilage of an existing permanent structure. It follows that a new dwelling within that curtilage will not be an "isolated home"....*

7. I accept that for the purposes of deciding whether a proposed development site falls within the definition of "previously developed land", its location within an existing residential curtilage is indicative that a new dwelling would not be isolated. However, paragraph 79 is not solely concerned with previously developed land. Westering (and its residential curtilage) is itself "isolated" in the sense that it has open fields on three sides, is outside the settlement boundary and (on the Appellants evidence) over half a mile from local shopping facilities. The construction of a new dwelling in the curtilage does not cure the isolation of the plot from local facilities.
8. On that basis, I consider that the development proposal should be tested against the one relevant circumstance under paragraph 79, which states that:

e) the design is of exceptional quality, in that it:

- is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and*
- would significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area.*

¹ National Planning Policy Framework

² Dartford Borough Council v Secretary of State for Communities and Local Government and Ors [2017] EWCA Civ 141

³ As defined in the Glossary to the NPPF

9. I have no doubt that the design of the bungalow is of a high standard. However, I have no evidence that it constitutes an outstanding or innovative design and that it would raise the standards of design in the rural area. The design is wholly modern which is at odds with the very traditional style of Westering. I do not consider that the proposed development would significantly enhance its immediate setting.
10. The closest group of buildings to the development site (the group of houses at Barn Close) are relatively recent but appear to have been designed to reflect the style of buildings which could be expected in a rural area, by use of brick and timber cladding and the pitch of the roofs. By virtue of its modern design and siting to the rear of Westering, I do not consider that the proposed development would be sensitive to the characteristics of the local area.
11. For those reasons I consider that the proposed development would be an isolated dwelling for the purposes of paragraph 79 and that none of the circumstances apply to overcome the policy that such development should be avoided.
12. Policy CS6 of the FLDF requires that priority will be given for the development of previously used land within the defined urban settlement boundaries. As the development site is outside the Titchfield boundary, the proposed dwelling would fail to comply with Policy CS6. Policy CS14 requires that development outside the settlement boundaries should be *"strictly controlled to protect the countryside ...from development which would adversely affect its landscape, character, appearance and function."* Policy DSP6⁴ seeks to restrict new residential development outside defined urban settlement boundaries to specified situations. I have no evidence that the new dwelling would be essential for a rural worker. Whilst DSP6(iii) does allow for a new dwelling as an infill in a residential frontage, siting to the rear of an existing dwelling is specifically excluded.
13. Taking the development plan as a whole, I consider that the proposed development would directly conflict with the policies which seek to protect the character and appearance of the countryside. This is because the proposed development would create a new residential unit to the rear of an existing dwelling on an isolated plot outside of the settlement boundary of Titchfield. For that reason, I attach considerable weight to the conflict with the development plan.
14. The local plan policies are consistent with the NPPF. Paragraph 170 which deals with conserving and enhancing the natural environment places emphasis on the protection and enhancement of valued landscapes. Paragraph 127 requires that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.

Protected Sites

15. FLP2 contains Policy DSP15 which seeks to mitigate recreational disturbance on protected areas. The Policy accepts that *".... proposals for a net increase in residential units may be acceptable where "in combination" effects of recreationare satisfactorily mitigated through the provision of a financial contribution...."*

⁴ Adopted Local Plan Part 2: Development Sites and Policies Plan 2015

16. The Appellant recognises at paragraph 6.16 of the appeal statement that important environmental designations affect the development site and accepts that financial mitigation would be necessary. However, I have seen no evidence that a planning obligation has been entered into and without certainty that appropriate mitigation will be provided, the proposed development would be contrary to Policy DSP15.

Other material considerations

17. The parties to this appeal agree that the Council has a shortfall in its 5-year housing land supply. Policy DSP40 of the Fareham Local Plan Part 2: Development Sites and Policies ("FLP2") deals with this situation by seeking to test proposed development against five criteria. However, FLP2 was adopted in June 2015 and precedes the introduction of the "tilted balance" as described by paragraph 11(d) and footnote 7 of the NPPF. Therefore, in relation to the provision of housing, the local plan policies are to be regarded as out of date and the appeal is to be determined in accordance with the NPPF as a whole.
18. NPPF paragraph 11 sets out the presumption in favour of sustainable development and requires that decision takers should grant permission unless (in specified circumstances) the adverse effect of the grant of permission would significantly and demonstrably outweigh the benefits, when assessed against the NPPF policies as a whole.
19. Paragraph 11(d) provides that where the relevant local plan policies are out-of-date or considered to be out of date under footnote 7, permission should be granted unless NPPF policies which protect a specified list of assets of importance provide a clear reason for refusal (Paragraph 11(d)(i)), or in other cases, any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the [NPPF] (Paragraph 11(d)(ii)).
20. The appeal site is not within the specified Paragraph 11(d)(i) assets, so that the test in Paragraph 11(d)(ii) applies. The adverse impacts and the benefits of the proposed development should be balanced, taking the NPPF as a whole.
21. Paragraph 127 of the NPPF requires that decisions should be "*sympathetic to landscape setting, while not preventing or discouraging appropriate...change...*". Paragraph 131 of the NPPF requires that great weight should be given to "*outstanding or innovative designs which...help raise the standard of design....so long as they fit in with the overall form and layout of their surroundings.*" The addition of one house would go a small way to addressing the shortfall in the housing land supply (and would therefore have a social and economic benefit) but would cause harm to policies in the development plan and the NPPF which seek to protect the countryside and landscape settings.

Planning Balance

22. The proposed development would be contrary to the development plan taken as a whole in that it would create built development in and would adversely impact the character of the countryside. The determination of the appeal should be in accordance with the development plan unless material considerations indicate otherwise.
23. NPPF Paragraph 11 indicates that as the Council has a housing land supply shortfall, local plan policies as applied to proposed housing development are to

be considered out of date. However, the harm caused to the character of the countryside is such that the limited benefits of the proposed development are significantly and demonstrably outweighed when taking the NPPF as a whole

Other Matters

The fallback position

24. Where a developer may legally carry out a development other than that which is the subject of an application or appeal, the decision maker must take account of the other development as a fallback, and decide how much weight to attribute to it.
25. The Appellant considers that the certificate of lawfulness for the construction of a triple garage constitutes a fallback position. The footprint of the garage is similar to that of the proposed bungalow, but the Appellant considers that it would have a design of lesser quality than the proposed development. The Appellant refers to an appeal decision relating to Stoneydown Cottage⁵ and the Mansell decision in the Court of Appeal⁶. Both cases related to “permitted development rights” under the GDPO⁷. However, there are significant differences between those cases and the proposed development.
26. The Stoneydown Cottage proposal was to demolish an existing garage and workshop and replace them with a two-storey extension incorporating a workshop and garage. The Inspector concluded that the proposal was contrary to Green Belt policies but gave significant weight to a fallback development which would have had a greater impact on the openness of the Green Belt than the proposed development. He was satisfied that there was a greater than theoretical possibility that the fallback development would be implemented.
27. The certificate of lawfulness in the current appeal is for a development which is not comparable to the proposed development. The lawful development is a garage to be used in conjunction with the existing dwelling. The proposed development creates a new planning unit with an entirely separate dwelling. I have been given no evidence to suggest that there is anything more than a theoretical possibility that the garage would be constructed.
28. In relation to the fallback position in the Mansell case, the Court considered the evidence provided to the local authority planning committee which showed that the landowner (a charitable body) was intent on achieving the greatest possible value from the redevelopment of the site for housing. The Court concluded that the council was entitled to accept that there was a real prospect of the fallback development being implemented.
29. In the current appeal, there is a fallback position which should be given weight in the decision. However, I am not satisfied that there is any real prospect of the fallback development being implemented and I accordingly attach very little weight to it in determining this appeal.

Conclusion

30. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

⁵ APP/U1240/D/18/3216544

⁶ Michael Mansell v Tonbridge and Malling Borough Council and Ors [2017] EWCA Civ 1314

⁷ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Jan Hebblethwaite

INSPECTOR