
Appeal Decision

Site visit made on 6 January 2021

by S M Holden BSc(Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary State

Decision date: 08th February 2021

Appeal Ref: APP/G2245/W/20/3259847

Manderville, Egg Pie Lane, Weald, Tonbridge TN11 8PE

- 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 & Mrs C Curran against the decision of Sevenoaks District Council.
 - The application Ref 20/01112/FUL, dated 21 April 2020, was refused by notice dated 16 June 2020.
 - The development proposed is demolition of the existing buildings on site and erection of a new dwelling, together with new access and car parking/turning area.
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Decision

1. The appeal is dismissed.

Main Issues

2. 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 of the proposal on biodiversity and protected species;
 - If the proposal 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 the proposal.

Reasons

Inappropriate development

3. The appeal site lies within the Green Belt and is part of a larger landholding associated with the dwelling, Manderville. This house has a large garden to its front and rear; the remainder of the land appears to be woodland and paddock. Immediately to the west of the house is an area of hard surfacing and a range of single storey buildings connected to one another. They comprise a garage, workshop, 5 former stables, tack room and cattle shed, which I will refer to collectively as the outbuilding.
4. The appeal site is an irregular shape and comprises the outbuilding, a rectangular area to the north and west of the outbuilding and a strip of land within the field through which it is proposed to construct an access from Egg Pie Lane. The outbuilding would be demolished and replaced by a new dwelling served by this new access.

5. Paragraph 145 of the Framework states that local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt. This is subject to a limited number of exceptions, only one of which is relevant to this case. This is g) which permits limited infilling or the partial or complete redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development.
6. Policy LO8 of the Sevenoaks District Council Core Strategy, adopted 2011 (Core Strategy) seeks to protect the extent of the Green Belt. Since the publication of the first Framework in 2012 the Council has adopted *Development in the Green Belt: Supplementary Planning Document 2015 (SPD)* which provides more detailed guidance on the implementation of policies set out in the Core Strategy. As this also seeks to apply national policy within the local context, I have had regard to its advice and guidance in my assessment of the proposal.
7. The Framework's definition of previously developed land (PDL) is that 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 curtilage should be developed) and any associated fixed surface infrastructure. There is agreement between the parties that the outbuilding is previously developed land. However, the extent of its curtilage is a matter of dispute arising from issues pertaining to its use.
8. The appeal site includes a small triangular piece of land to the rear of the garage which is enclosed by fences and adjoins the rear garden of Manderville; its use is unclear. The field to the rear of the former stables was used for grazing. However, there was no evidence to establish an equine use for this field. In any event, both these areas are open, undeveloped and do not contain any fixed surface infrastructure. Even if I was to accept that they could be considered as the curtilage of the outbuilding and therefore PDL, the determining factor is whether or not the proposal would have a greater impact on openness than the existing development.
9. The essential characteristics of Green Belts are their openness and their permanence. Openness is essentially the absence of development and can have both spatial and visual effects.
10. The area on which it is proposed to site the dwelling straddles the triangular plot and the field. The long narrow 'L'-shaped outbuilding would be demolished and replaced by a single-storey dwelling with a smaller, more compact footprint. This could be as much as 14sqm smaller than the outbuilding. Nevertheless, the dwelling's main ridge would be more than 2m taller, and its projecting wings more than 1m taller, than the outbuilding. This greater height, volume and mass would almost certainly offset any reduction in the footprint. The additional height would also be contrary the advice of the SPD that buildings should not exceed the height of existing buildings. The change in size and shape of the built form would therefore, at best, have only a marginal effect on the spatial aspect of openness.
11. In addition to the erection of a new building, the remainder of the appeal site would become either part of the access driveway or the domestic garden of the dwelling. The creation of the proposed access would involve engineer operations and include works necessary to accommodate the change in levels between the site and Egg Pie Lane. Paragraph 146 b) of the Framework permits engineering operations, but only where they preserve openness and do not conflict with the purposes of including land in the Green Belt. By introducing a new access, together with hard surfacing along the driveway and a vehicle turning area, these works would fail to preserve the spatial aspect of the site's openness.

12. The effect on openness is not only related to the size of the proposal but also to its visual effects, including those arising from its use. There are glimpses of the outbuilding from Egg Pie Lane through the roadside vegetation. As a long, low level timber building with a shallow pitched roof, it is typical of ancillary or agricultural buildings seen in rural areas. Its height, form and materials mean that it is visually unobtrusive. By contrast the proposed dwelling would be a taller, bulkier building with a gable projection including large windows that would face the street. It would be more visually prominent with an obviously domestic appearance and therefore visually harmful to the openness of the site.
13. Furthermore, there would be visual harm arising from the construction of the new access and addition of boundary treatments with the sub-division of the field to provide a garden for the dwelling. Added to this would be the domestic paraphernalia and activities associated with the residential use. This combination of effects would fundamentally change the appearance and use of the site causing harm to the openness of the Green Belt in this locality.
14. Drawing the threads of my assessment together, even if I had accepted the whole site was PDL, I have found that the proposal would have a greater impact on openness than the existing development. This would be the consequence of the additional height and bulk of the building, the construction of the new access and the domestication of the site. It would therefore fail to safeguard the countryside from encroachment, contrary to one of the five purposes of the area's designation as Green Belt.
15. I therefore conclude that the scheme would be inappropriate development, contrary to national and local policy to protect the Green Belt.

Biodiversity and protected species

16. The appellant submitted additional evidence with the appeal in the form of a Preliminary Ecological Appraisal (PEA) and a Bat Emergence/Re-entry Survey (Bat Survey). The Council has had the opportunity to refer this evidence to the County Council's ecologist. I have therefore taken the additional information into account in my consideration of this matter.
17. All species of bat and some reptiles are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). The Wildlife and Countryside Act 1981 specifically protects other reptiles and protected species and provides general protection for all wild species of birds, animals and plants. Circular 06/2005 states that the presence of a protected species is a material consideration when a development is being considered which would be likely to result in harm to the species or its habitat. It goes on to state that '*it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, is established **before** (my emphasis) planning permission is granted*' (paragraph 99).
18. The PEA identified that surveys were required to establish the presence of bats and reptiles on the site. With respect to reptiles, the PEA advised that survey work should be focussed on the proposed new access which would cross reptile habitat and on potential harm that could arise during the demolition of the outbuilding. Any surveys should also take account the site's location within 500m of a pond, which increases the possibility of other protected species being found in the area. However, no additional survey work relating to reptiles or other protected species was presented. Without this to clarify the presence, or otherwise, of such species along with identification of suitable mitigation measures, this is not a matter which could be addressed through the imposition of conditions.

19. The Bat Survey observed several species of bat foraging near or over the site. However, there was no evidence of bats roosting in the outbuilding, in its immediate vicinity or within the surrounding trees. The report concluded that the demolition of the outbuilding would not result in the loss of any roosting habitat. Although Circular 06/2005 advises that conditions are only appropriate in exceptional circumstances, the Council was satisfied that sufficient protections could be secured by means of a condition. In the absence of any evidence of a bat roost within the building, I see no reason to come to a different conclusion.
20. Notwithstanding my conclusions in relation to protection of bats and provision of green infrastructure, I conclude that the proposal would be likely to result in harm to reptiles and other protected species. It would therefore fail to comply with the requirements of the Habitats Regulations and the Wildlife and Countryside Act. It would also conflict with Policy SP11 of the Core Strategy which requires development to demonstrate no net loss of biodiversity. However, I find no significant conflict with Policy GI1 of the Sevenoaks Allocations and Development Management Plan 2015 which seeks provision of green infrastructure beyond site-based landscaping.

Other considerations

21. The Council was satisfied that the proposal would provide adequate living conditions for future occupants and would be sufficiently distant from nearby dwellings to prevent adverse effects on those neighbours. The access and parking arrangements would comply with the highway authority's requirements. The scheme's design and the materials proposed would be in keeping with the rural pallet of the area. However, as all these matters are development plan requirements they are not factors in the scheme's favour.

Green Belt Balance and Conclusion

22. I have found that the proposal would be inappropriate development in the Green Belt, a matter to which the Framework requires me to attach substantial weight. In addition, I have found that I cannot be certain that protected species would not be harmed. This matter is an additional significant factor weighing against the scheme.
23. There are no other considerations that clearly outweigh these collective harms. The very special circumstances required to justify the proposal do not, therefore, exist. For this reason, the appeal is dismissed.

Sheila Holden

INSPECTOR