



Appeal Decision

Site visit made on 24 November 2020

by A Denby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2021

Appeal Ref: APP/X0415/W/20/3257963

**Land to the rear of Elmcroft, The Green, Ley Hill, Chesham,
Buckinghamshire, HP5 3QR**

- 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 Matt & Sally Gardner against the decision of Buckinghamshire Council.
 - The application Ref PL/19/3820/FA, dated 4 November 2019, was refused by notice dated 17 June 2020.
 - The development proposed is erection of new dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Draft Chiltern and South Bucks Local Plan, 2036 (ELP) has been withdrawn from examination by the Council. Accordingly, ELP policies do not carry weight in this appeal; I will return to the relevance of the ELP subsequently.
3. I note that the appellant submitted amended plans to the Council during the application process, though the Council did not take them into account due to the stage their consideration of the application was at. I appreciate this would have been a disappointment to the appellant. However, the Council's refusal was on the basis of the original plans. It is not the role of the appeal process to evolve a scheme, and the amended plans alter the form and design of the proposed dwelling, which are intrinsic to the merits of the scheme upon which several local residents have made representations. In that light to determine the appeal based on these amended plans may deprive interested parties of the opportunity to comment. In the interests of fairness, I have therefore determined the appeal on the basis of the application considered by the Council.
4. I acknowledge that pre-application discussions took place and that some positive responses were given by the officer at that time. Nevertheless, it is the decision of the Council I must have regard to, and the Council's administration of the application are not planning matters for me to address as part of this appeal.

Main Issues

5. The appeal site is located within the Metropolitan Green Belt. Accordingly, 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 Development Plan policy.
- The effect of the proposed development on:
 - the openness of the Green Belt;
 - the character and appearance of the area;
 - the living conditions of existing occupiers, with particular regard to outlook; and
- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal, depending on my conclusion in respect of the first two main issues.

Reasons

Inappropriate development

6. Paragraph 145 of the Framework sets out the categories of development which may be regarded as not inappropriate in the Green Belt. The exceptions include, at Paragraph 145(e), limited infilling in villages.
7. Policy GB2 of the Chiltern District Local Plan, 1997¹ (LP) states that there is a general presumption against most development in the Green Belt with certain exceptions, with limited infilling being listed as one such exemption. That policy supports limited infilling in identified areas, including Ley Hill, as outlined in LP Policy GB5. There is also some conditional support for limited infilling set out in LP policy GB4.
8. However, the Framework does not define a village or what would constitute limited infilling, and a High Court judgment² brought to my attention underscores that it is necessary to consider the facts on the ground. Whether or not a proposal represents limited infilling is ultimately a matter of planning judgment, having regard to factors such as the nature and size of the development, the location of the application site and its relationship to other, existing development adjoining and adjacent to it.
9. In substance LP policy GB2 is broadly consistent with the provisions of the Framework relating to development in the Green Belt. Paragraph 213 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. However, the criteria in LP policy GB5 and GB4, related to infilling, are more restrictive than the provisions in the Framework (a position I have arrived at independently, albeit aligned with that of the Inspector who determined appeal Ref: APP/X0415/W/16/3158153 which has been brought to my attention). As such I accord any conflict with those criteria only limited weight, to the extent that they are logical considerations by which to assess a proposal.

¹ Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011.

² Julian Wood v The Secretary of State for Communities and Local Government, Gravesham Borough Council (2015) EWCA Civ 195

10. The appeal site lies to the rear of Elmcroft and Shenley Cottage which form part of a distinctly linear arrangement of dwellings that front on to The Green. Whilst not sharing the same access arrangements as properties to the north, I saw that these existing dwellings do visually form an intrinsic part of this strong linear form of development, even when considering existing landscaping to The Green. The proposed dwelling would also be viewed within this context, particularly in views from the rear and along the adjacent public footpath.
11. Infilling is normally associated with the completion of an otherwise substantially built up frontage of several buildings or, at the very least, the consolidation of a largely built up area. There is development to the south, though the adjacent public footpath provides a clear break to the appeal site, and the proposed dwelling would not relate physically or visually to that existing development.
12. There is no development to the west, though to the north, there is a swimming pool and outbuilding within the site, and outbuildings within the gardens of other properties fronting The Green. These are however ancillary structures which are viewed as low level buildings in the context of the established pattern of development. They are visually not comparable to the impact that would result from the new dwelling proposed, and there is significant separation between the site and any substantial forms of built development.
13. Rather than being a readily identifiable gap in the prevailing layout of a largely built up area, the appeal site forms part of the land associated with Elmcroft, and the proposal would represent an extension beyond the existing coherent and consistent form of development here. Consequently, I do not consider that the development proposed would represent infilling as envisaged by the Framework or LP. Notwithstanding the close proximity of the site to existing development, when considered 'on the ground' in my view the appeal site could not reasonably be considered to constitute limited infilling.
14. The appellant has referenced appeal decisions³ where proposals were considered to constitute limited infilling. The decisions related to sites within different local authority areas where surrounding context inevitably differs. I do not have the full details of those schemes before me though, and as detailed above whether a scheme represents limited infilling is ultimately a matter of planning judgment. Therefore, having determined this appeal on its own merits, these other decisions do not lead me to a different conclusion.
15. Consequently, and with reference to my reasoning in paragraphs 8 and 9 of this decision, the proposal would not be consistent with the relevant provisions of LP Policies GB2 and GB5, which seek to manage development in the Green Belt, and I conclude that the proposal would not meet the exception criteria of paragraph 145 (e) of the Framework. It would constitute inappropriate development. Paragraph 143 of the Framework states inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 of the Framework is clear that substantial weight should be given to any harm to the Green Belt.

³ APP/M3645/W/16/3141780 & APP/P0240/W/18/3196341

Openness

16. A fundamental aim of Green Belt policy, as set out in Paragraph 133 of the Framework, is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. Court judgments, including those referenced by the appellant, have confirmed that there can be both spatial and visual dimensions to openness within the Green Belt. In my view it is necessary to quantify effects on openness, in addition to my reasoning in the first main issue, to gauge the degree of any harm that would result.
17. The site consists of garden land and the construction of a two-storey dwelling on the site would therefore result in built development where there is presently none. The introduction of formalised driveway and turning area, parked vehicles, and domestic paraphernalia, such as garden furniture and children's play equipment, in addition to the proposed dwelling would inevitably lead to a loss of openness. The potential for such to arise, in my view, is significantly greater in connection with an additional dwelling compared to present circumstances.
18. The proposed dwelling would be a clearly separate and sizeable building, and this would be both visually and spatially harmful and represent a significant intrusion into the openness of the site and Green Belt. I therefore attach significant weight to this harm.

Character and appearance

19. There are a mix of designs and dwelling sizes in the surrounding area, though there is regularity in the street scene which comes from the distinct linear character of the development immediately to the east of the site, which consists primarily of large detached dwellings with substantial rear gardens.
20. The existing swimming pool and detached timber outbuildings within the site are low-level structures, and consequently the appeal site, and its immediate environs have a spacious and open character which contributes positively to the character and appearance of the area. The plot of Elmcroft is spacious and, as set out above, accessed differently from dwellings to the north this side of The Green. However, it is not readily apparent from public vantage points as significantly different from other plots, representing residential garden space associated with properties arranged more-or-less regularly along a consistent building line.
21. The appeal scheme would be an individual property, served off its own driveway and would represent backland development, sited as it would, to the rear of the existing linear development. Although the dwelling would retain a generous garden area, the dwelling itself would be sited to one side of the plot, in very close proximity to three of the site boundaries. This would not be reflective of the established pattern of development. Considering its siting, overall size and bulk, the dwelling would appear cramped, lacking the spaciousness that is characteristic of development in the vicinity.
22. Whilst the development to the south appears more clustered, there is still a strong form and regularity in its layout and design. Development either fronts onto The Green or is arranged around formal cul-de-sacs. The appellant states that there are examples of backland development in the area, though none

appear to be in close proximity to the site. However, I do not know the full circumstances of those schemes, and in any event, each case must be considered on its own merits.

23. The appellant considers that existing landscaping would aid in screening the development, and additional planting could further mitigate any visual impacts. However, the detail provided appears to suggest that a significant amount of the existing landscaping to the southern boundary falls within the adjacent site, and as such limited reliance could be placed on it being retained. Furthermore, considering the proximity of the proposed dwelling to the site boundaries it is not clear how much of the existing landscaping could reasonably be retained. The space available for additional landscaping would also appear limited.
24. I am therefore not satisfied that the proposals could achieve a landscaping scheme that would adequately screen the substantial built development or significantly mitigate its harmful visual impact. For that reason, this matter could not be addressed by condition.
25. The proposed dwelling would appear as an isolated and incongruous development. It would be a prominent feature, particularly when viewed from the west and the public footpath, though it is acknowledged that views from The Green would be more limited.
26. Nevertheless, it would result in the creep of built development and this would have an urbanising impact, which would result in unacceptable harm to the existing character of the site and surrounding area. The development would erode the contribution that the existing site makes to the character and appearance of the area and would not be appropriate in terms of the existing form and pattern of development.
27. The proposal would therefore not accord with LP Policy GC1 and Policy CS20 of the Core Strategy for Chiltern District, 2011 (CS) which seek to ensure that development achieves a high standard of design, reflecting and responding positively to the character of the surrounding areas and local distinctiveness. For the same reasons the proposal would also fail to achieve the high-quality design requirements of the Framework.
28. The appellant has drawn my attention to a decision made by the Council⁴ for development within a 'backland' position. From the limited details provided the Officer in that case considered the proposed plot to be comparable in shape, depth and width, and that the proposal would not appear cramped or alien when compared to the neighbouring plots. This would not be the case with the appeal scheme and this other decision does not, therefore, lead me to a different conclusion.

Living conditions

29. Nos 5 and 6 Holly Tree Close are located to the south of the site. Their rear elevations face towards the appeal site and the depth of their rear gardens is limited. The existing footpath and boundary features around the plot of the War Memorial Hall would provide some separation between garden boundaries, though the proposed dwelling would still be in very close proximity to these properties and their garden boundaries compared to the prevailing inter-relationship between properties in the area.

⁴ PL/20/0666/FA

30. Due to its proposed layout and design, particularly its width and overall bulk, the proposed dwelling would result in a substantial expanse of built development in close proximity to the rear site boundary. When viewed from Nos 5 and 6, in particular their outdoor garden areas, it would be a dominant and imposing feature, given the low-density nature of the area and openness of the Green Belt here. This would be especially apparent from No 5 as the proposal would result in built development extending almost along the whole width of this plot. There would be a general perception of loss of privacy and feeling of being hemmed in, which would have a harmful effect on the living conditions of existing occupants.
31. The proposed dwelling would sit to the rear of Shenley Cottage, which forms part of the existing linear development fronting The Green. There would be greater separation to this existing property though the site would directly adjoin its garden boundary. There is currently an appreciation of the open character of the site and surrounding area from Shenley Cottage, and having viewed the site from the rear garden of this property, it is also clear that the dwelling and garden sit at a lower ground level than the appeal site.
32. There would be a large flank elevation in close proximity to the boundary and considering its overall bulk, in particular the roof, the dwelling would still appear as a substantial building. Despite my reasoning in paragraph 31, the dwelling proposed would, from that perspective, represent a dominant and enclosing feature and result in occupants of Shenley Cottage feeling hemmed in.
33. Existing landscaping would partially screen the development from the adjacent properties though, as detailed above, I cannot be certain that this could be retained or that there would be sufficient space for any meaningful replacement.
34. Due to the orientation of the proposal, positioning of windows, and proximity of other dwellings and gardens, I am not of the view that unacceptable effects would otherwise arise in respect of impeding natural light or overlooking. I note those matters do not form part of the Council's case. However, those are essentially neutral findings, which do not outweigh the harm that would result.
35. For the reasons above I conclude that the development would result in unacceptable harm to the living conditions of existing occupiers, and therefore conflicts with LP Policy GC3 which seeks to protect the amenities enjoyed by occupants of existing adjoining and neighbouring properties.

Other considerations

36. The Council have acknowledged that they cannot demonstrate a 5-year Housing Land Supply and the identified shortfall is significant, so therefore a new dwelling close to local services, facilities and transport links would be beneficial in that respect. I recognise the important contribution small sites can make to meeting the housing requirements of an area. However, the provision of 1 dwelling would only have a limited benefit in relation to boosting the mix and supply of housing. There would be some economic benefits during construction and from future occupants use of local services. Taken together these benefits would, however, be modest.

37. The construction industry will be important to economic recovery after the Covid-19 pandemic. However, there is nothing to suggest that in dealing with the recovery it would be necessary to undertake development on sites that are not policy compliant, nor that the benefits of the proposal would be substantial in that respect, as reasoned above.
38. Noting the concerns of those nearby, the Council does not object to the proposal in terms of highways effects, garden area, parking provision, overlooking or proposed materials. However, even were I to find that the proposal was acceptable in those respects, that would be neutral in my assessment.
39. The appellant has stated that the ELP proposed removing the area from the Green Belt. Nevertheless, as detailed above this plan has now been withdrawn. There is no certainty that the Green Belt boundary would be amended in the future, and that policy approach and the evidence underlying it did not progress through examination to adoption (a process that involves assessing its soundness, including consistency with national policy, and any objections). Currently the site is within the Green Belt, and the statutory basis for decision-taking is that decisions must be taken in accordance with the development plan unless material considerations indicate otherwise. I have found that harm to the Green Belt, and other harm, would result from the proposal.
40. The appellant has also referred to a document titled '*Laying the Foundation, A Housing strategy for England*'. I have already taken into account the economic benefits of the development, and this document published in 2011 preceding the Framework does not, therefore, lead me to a different conclusion.
41. With reference to Paragraph 11 of the Framework, I have set out above how the Council are unable to demonstrate a five-year housing supply of deliverable sites. However, notwithstanding the withdrawn ELP, the site falls within the Green Belt. As a matter of planning judgement, I have reasoned that the proposal is inappropriate development, that other harm would result, and that no benefits of the scheme or other material considerations are sufficient to outweigh that harm. Notwithstanding my reasoning in paragraphs 8 and 9, the Green Belt is nonetheless identified as a protective policy capable of providing a clear reason for refusal under paragraph 11d)i) of the Framework.

Conclusion

42. I consider that, individually or cumulatively, the moderate benefits of the proposal, including a new dwelling and the associated economic and social benefits, and other material considerations, would be insufficient to clearly outweigh the substantial harm that would result. Consequently, although there would be certain benefits, the very special circumstances necessary to justify the proposal do not exist. The proposal would be contrary to LP Policies GB2, GB5, GC1 and GC3 and CS Policy CS20 and relevant elements of the Framework.
43. For the reasons given above, and having considered the development plan as a whole and the approach in the Framework, I conclude that the appeal should be dismissed.

A Denby INSPECTOR