



Appeal Decision

Site Visit made on 2 February 2021

by R E Jones BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2021

Appeal Ref: APP/P1940/W/20/3257184
19 Toms Lane, KINGS LANGLEY, WD4 8NA

- 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 Mrs W Twyman against the decision of Three Rivers District Council.
 - The application Ref 20/0556/OUT, dated 2 March 2020, was refused by notice dated 4 June 2020.
 - The development proposed is described as: 'outline application for the construction of five detached dwellings, following demolition of existing house, garage and outbuildings.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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 drawing 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

3. The main issues of the appeal are;
 - whether the proposed development 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;
 - whether or not a contribution towards the provision of affordable housing is appropriately secured;
 - the effect of the proposed development on the character and appearance of the surrounding area; and
 - if the development is inappropriate, 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 development.

Reasons

Whether Inappropriate Development

4. The appeal site is situated in the Green Belt. The Framework outlines that the construction of new buildings, other than in connection with a number of exceptions, should be regarded as inappropriate in the Green Belt. Inappropriate development according to the Framework is harmful to the Green Belt and should not be approved except in very special circumstances. One of the exceptions is limited infilling in villages.
5. Policy CP11 of the Council's Core Strategy¹ does not fully reflect the provisions of the much later Framework in respect of development within the Green Belt as it does not outline any of the exceptions as contained within paragraph 145. As such I consider that this policy is only partially consistent with the Framework. Policy DM2 of the Local Plan², similarly does not list those exceptions. However, it states, amongst other things, that within the Green Belt, except in very special circumstances, approval will not be given for new buildings other than those specified in national policy, and in this respect I consider that it is consistent with the Framework.
6. The appeal site is located outside of the main settlement boundaries and is not located within any of the Settlement Hierarchies as set out within the Core Strategy. Yet, case law indicates that whether a site is within a defined village boundary in a Development Plan is not conclusive to determining whether a site is within a village or not. It is for the decision maker to decide whether, as a matter of fact on the ground, the site appears to be in a village.
7. Toms Lane comprises a long residential street where dwellings are laid out in a linear formation either side of the road. The built frontage is largely contiguous with occasional accesses leading to residential streets and buildings behind the frontage, which are within more spacious surroundings amongst fields and paddocks. Toms Lane and its immediate environs have a spacious and suburban character. Although they are somewhat divorced from the settlements of Bedmond and Abbots Langley to be considered as forming part of those villages, these areas are only a short walk from shops and services in Kings Langley to the west.
8. The southern portion of the appeal site would partly occupy a gap in Toms Lane's northern frontage between two existing dwellings. The site's northern half would partly adjoin neighbouring residential curtilages, while being located close to a large group of buildings relating to a Cattery and Kennel business, to the rear. Whilst the arrangement of dwellings and buildings in the appeal site's immediate vicinity are more spacious and dispersed than those beyond the railway line to the west and closer to Kings Langley, there aren't any significant distances or large clear breaks between buildings. I therefore consider that the appeal site is within a village for the purposes of the Framework.
9. The Council have referred to similarities between the proposal's location and the site off Harthall Lane that was dismissed at appeal³. In that case the Inspector determined that the site did not form part of a village. Having regard

¹ Local Development Framework - Core Strategy, adopted 17 October 2011 (Core Strategy)

² Local Plan – Development Management Policies, Local Development Document, adopted July 2013 (the Local Plan)

³ APP/P1940/W/19/3229189

to that decision, I consider that the scheme before me differs in terms of the more reduced spacing between the appeal site and adjacent buildings, while having a suburban character in contrast to the rural/countryside setting of the Harthall Lane site.

10. There is no definition of “limited infilling” within the Framework. However, I consider that it would comprise the filling of a defined and limited gap between buildings, rather than the development of a more substantial, open and mostly undeveloped area of land that happens to be in close proximity to other buildings.
11. The appeal site comprises part of an expansive rear garden that extends a considerable length to the rear of No 19 Toms Lane. A significant part of the site’s northern portion adjoins the garden areas associated with neighbouring dwellings. Some of the proposed dwellings would likely be contiguous with these garden areas rather than occupying spaces between neighbouring dwellings. In addition, part of the appeal site’s northern corner, where two of the proposed dwellings would likely be positioned, would have boundaries adjoining a large agricultural field. As a result, the area behind the frontage development does not appear as an obvious gap between existing properties in a continuous built up frontage.
12. It is acknowledged that the appeal site would be close to the dwelling and buildings associated with the Cattery/Kennels. Yet, these are dispersed over a wide area to the north west of the appeal site. Moreover, the proposal would not appear, from my assessment of the submitted drawings and the situation on the ground, to be contiguous with the boundary of that premises, as a portion of No 19’s garden would remain between the appeal site and the boundary of the Cattery/Kennels.
13. Consequently, when judged against the wording of national policy the proposal would not represent limited infilling within a village or any of the Frameworks’ other exceptions. It would thus be inappropriate development in the Green Belt which, according to the Framework, is harmful by definition. It would therefore conflict with Policy CP11 of the Core Strategy, Policy DM2 of the Local Plan and the Framework.

Effect on Openness

14. In light of the above, there is a need to consider the effect of the proposal on the openness of the Green Belt. The Framework indicates that openness is an essential characteristic of the Green Belt. The Supreme Court has recently held that a consideration of openness in any given case is a matter for the decision maker and may or may not include a consideration of the visual aspect of openness. For the purposes of this appeal, I have considered both the visual and spatial aspects of openness.
15. The net gain of four dwellings at the site would introduce structures, an access drive, attendant parking areas and domestic paraphernalia onto a largely undeveloped garden. Therefore, the introduction of these would have more of an impact on the openness of the Green Belt in spatial terms than the existing circumstances.
16. Details of the scale, layout and appearance of the proposed dwellings have not been submitted for approval at this stage, and it is acknowledged that the

proposed units could be single storey and screened by landscaping. However, the proposal would likely be visible from Toms Lane through the gap created by the proposed access road, while appearing prominent through and over boundary features, including from adjacent properties. As such, the proposal would have greater visual impacts on the Green Belt than the present situation.

17. Consequently, there would be a loss of openness in the Green Belt. While the harm would be moderate, this would be contrary to the Framework where it states an essential characteristic of Green Belts are their openness. Although judged, for the purposes of the Framework, to be in a village, the development would not comply with the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open.

Affordable Housing

18. Policy CP4 of the Core Strategy requires small new residential developments to make a financial contribution to the provision of affordable housing. This is unless site circumstances and financial viability indicate otherwise.
19. Paragraph 63 of the Framework, however, indicates that affordable housing contributions should not be sought for major development at proposals for less than 10 dwellings. The appeal proposal is not a major development, and accordingly, seeking a contribution towards affordable housing in these circumstances would conflict with the policy set out in the Framework.
20. The Council's case is that Policy CP4 should continue to apply to all housing developments, notwithstanding its lack of consistency with the more recent Framework. In justifying this position, it has provided robust evidence of a high affordable housing need in the district. Furthermore, a number of similar appeal decisions, cited by the Council, show that Inspectors have considered development plan policies with lower affordable housing thresholds to outweigh national policy given the local evidence of substantial affordable housing need.
21. Whilst the Framework is a material consideration of very considerable weight, based on the local circumstances of this case, in this instance the Framework does not outweigh the relevant development plan policy. In making this judgement, I have given considerable but not full weight to Policy CP4.
22. The appellant has not shown any clear willingness to provide the required contribution towards affordable housing. Nor, do I have a mechanism before me in which to secure the payment. There is also no justification, before me that points to the scheme's site circumstances and financial viability being a reason for not committing to a contribution.
23. The appellant has highlighted the Council's acute housing supply issues. This is acknowledged, nevertheless, the provision of units that would contribute to the local housing stock does not justify an exemption to the payment of a contribution towards the Districts affordable housing needs.
24. In the absence of any commitment or evidence to provide a financial contribution I cannot be satisfied that the affordable housing provision would be secured. The proposed development would therefore conflict with Policy CP4 of the Core Strategy and the Affordable Housing Supplementary Planning Document (June 2011), which amongst other things requires all new development resulting in a net gain of one or more dwellings to contribute to the provision of affordable housing.

Character and Appearance

25. Although the predominantly linear pattern of development in this area is evident, different scales of development are sited to the rear of Toms Lane, for example the handful of dwellings to the rear of Nos 57 and 59, and Hilltop Road a short distance to the east of those dwellings. Closer to the appeal site, the nearby Cattery/Kennels business is also located behind the frontage and incorporates numerous buildings spread across the site. There is also the small cul-de-sac of four dwellings that was approved by the Council⁴ to the rear of Nos 3 and 5 Toms Lane (Nos 3-5) and separated, from the appeal site, by a small paddock. Consequently, the pattern of development has some variety.
26. Policy DM1 of the Local Plan seeks to ensure that new residential development is not inappropriate for the area. It references forms of “backland” development but does not indicate that they are unacceptable in principle.
27. The illustrative drawing accompanying the proposal shows four dwellings set behind the properties facing Toms Lane. Some of these would be located a short distance from the Cattery/Kennels, while the housing scheme to the rear of Nos 3-5 is located further to the appeal site’s west and separated by a small paddock. The spaces between those dwellings would be comparable to the arrangement of units on the illustrative drawing. Adequate separation distances, between the units, could also be maintained to ensure that the proposal would not appear cramped.
28. It is noted that the proposed garden areas, that could be achieved, would be shallower than the much deeper rear gardens at Nos 21 – 47 (odds) Toms Lane. Nevertheless, they would be consistent, in terms of area and depth, with private amenity areas relating to the dwellings to the rear of Nos 3-5, and with those further afield at Belgrave Drive and Hilltop Road.
29. The public view of the proposed dwellings would be limited to a glimpsed view through the site access, and from the rear of adjacent dwellings. Consequently, having regard to the pattern of development, including the presence of other buildings and streets off Toms Lane and the limited visibility from the public realm, I do not find in principle that the appeal proposal would harm the character and appearance of the area.
30. Accordingly, I find that the appeal proposal would not cause material harm to the character and appearance of the surrounding area. Therefore, it would comply with Policies CP1 and CP12 of the Core Strategy and Policy DM1 and Appendix 2 of the Local Plan. These, in part, require development to respond to the character of the area and respect local distinctiveness in terms of density, layout and spacing.

Other Considerations

31. The proposal would result in a net gain of four dwellings and although this is a small number, it would help somewhat, in addressing the Council’s under delivery of housing. It would also boost housing supply in general in line with Paragraph 59 of the Framework. This matter, therefore, attracts moderate weight, as does the proposal’s contribution to the local economy during the build phase and from the spending of future residents.

⁴ Planning Permission Reference 17/1825

32. Given its position close to local services and transport connections, the proposal's accessible location aligns with the objectives of the Framework and accordingly this aspect of the scheme attracts modest weight. There are no refusal reasons relating to matters such as living conditions at other properties, biodiversity, highway safety or parking. Nevertheless, the absence of other harm is a neutral factor.

Green Belt Balance and Conclusion

33. The proposal would be inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. While it would not cause harm to the character and appearance of the area, it would lead to a moderate loss of openness to the Green Belt. I have also found that the proposed development would be harmful to the provision of affordable housing in the District, given the lack of an off-site contribution to address that need.
34. For the reasons given above, the other considerations in combination do not clearly outweigh the harm to the Green Belt and the harm to the provision of affordable housing. Consequently, the very special circumstances necessary to justify the development do not exist.
35. The 2020 Housing Delivery Test results show that the Council has underdelivered against its housing requirement over the latest 3-year period. Consequently, the presumption in favour of sustainable development set out in Paragraph 11 d) of the Framework is engaged. However, despite the deficiency in the housing land supply, in accordance with Footnote 6, as the proposal would be contrary to Green Belt policies in the Framework this provides a clear reason for refusing the development.
36. Having regard to my findings that the proposal would be inappropriate development in the Green Belt and in light of Footnote 6, for the reasons set out above, I consider that the application of the Framework's Green Belt policies provide a clear reason for refusing the proposal.
37. The proposal would therefore be contrary to Policies CP4 and CP11 of the Core Strategy and Policy DM2 of the Local Plan, and the Framework
38. For the reasons given above, I conclude that the appeal is dismissed.

RE Jones

INSPECTOR