
Appeal Decision

Hearing Held on 16 February 2021

Site visit made on 17 February 2021

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 March 2021

Appeal Ref: APP/M3645/W/19/3241571

Land South of Furze field Chase, Dormans Park RH19 2LY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the failure to give notice within the prescribed period of a decision on an application for permission in principle.
 - The appeal is made by Fiftypointeight Architecture + Interiors against Tandridge District Council.
 - The application subject to appeal is Ref TA/2019/1774 dated 7 October 2019.
 - The development proposed is for the construction of between 5 and 9 dwellings, to be either detached or semi-detached or a combination, with associated parking and amenity space.
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Decision

1. The appeal is dismissed, and permission in principle is refused.

Procedural Matters

2. I note that the agent is acting on behalf of the landowners of the appeal site, who are unnamed on the planning application form. Accordingly, the agent is also the applicant as confirmed in the appeal correspondence and specified in the above header.
3. The appeal has been submitted on the grounds that the Council has failed to give notice of a decision on the application for permission in principle within the prescribed period. Whilst there are no reasons for refusal in contention the Council have indicated that permission should be refused for several reasons. I have determined the appeal on that basis.
4. The permission in principle consent route has two stages. The Council's decision on whether to grant permission relates to the first stage and is a determination based solely on the location, use and amount of development. Directly linked to those 'in principle' parameters outlined for assessment there are also more specific matters in dispute, which require regard to the provisions of the development plan and other material considerations. I have therefore reflected this in my reasoning and the subsequent subheadings used below.
5. The appeal plans before me include a site location plan. A further surface water technical plan was provided during the hearing. I have accepted the latter plan as it provides further background detail on the potential suitability of the location without prejudicing third parties. I have treated the other remaining submitted concept plan information within the evidence as indicative only.

Main Issues

6. The main issue is whether the site is suitable for residential development in terms of location, land use and amount of development having particular regard to:
- Whether the proposal is inappropriate development within the Green Belt;
 - The impact on the openness of the Green Belt;
 - The impact on the character and appearance of the area inclusive of the local landscape;
 - The effect to ecology/biodiversity interests also considering the Ashdown Forest Special Protection Area (SPA); and
 - Would any harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the proposal is inappropriate development within the Green Belt

7. The appeal site is identified by the main parties as falling within the Green Belt. New buildings in the Green Belt are regarded by the National Planning Policy Framework (the Framework) as inappropriate development unless certain exceptions apply. The appellant makes the case that the appeal scheme is not an inappropriate form of development owing to the exception listed at Paragraph 145 e) of the Framework relating to limited infilling in villages.
8. I note that the appeal site is a large open area of undeveloped land directly opposite a row of houses separated by a road. It is part of a larger wider area of undeveloped land. It is also flanked by the property known as Little Orchard on one side. On the opposite flank there is a further intervening road which other properties face onto.
9. The site itself is entirely free from existing buildings and structures. It is a considerable area of land stretching along a highway. Whilst there are existing properties nearby, the established road network provides an important break. These factors indicate that the land does not form an existing frontage where other built development is prevalent. Therefore, I disagree that the new dwellings proposed would represent infill development. The number of dwellings anticipated (up to nine) would also be of a magnitude which is above what could be described as limited in any event. Both reasons lead me to the conclusion that the exception listed in the content of the Framework would not be met.
10. The appeal decision at Copthorne Road, Felbridge (APP/M365/W/16/3141780) is referred to by the appellant as supporting similar infill development. But the appeal scheme before me involves a different set of site-specific considerations for a higher maximum number of dwellings. Other historic planning approvals identified by the appellant also involve different site characteristics.
11. Moreover, Dormans Park no longer has a defined settlement boundary within the Council's current development plan to give weight to. The appellant has

referred me to several rulings¹ to support his view that the site can be considered as part of a village in line with the Framework. I have taken those into account, but they do not alter my finding that the proposal would not be limited infilling.

12. I find that the appeal scheme would be an inappropriate form of development in the Green Belt. It would conflict with Policies D12 and DP10 of the Tandridge Local Plan Part 2: Detailed Policies 2014-2029 (TLP) which combined set out the village locations in the district where infilling is supported, involving a substantially developed frontage; and that inappropriate development should be resisted. It would also conflict with Paragraph 145 of the Framework defining the construction of new buildings as inappropriate development, as it does not fall within any of the exceptions listed.

Impact on openness

13. I accept that the in-principle stage subject to appeal does not include the dimensions of the dwellings proposed. Nevertheless, the land is presently free from built form. The erection of between five and nine new dwellings would have considerable volume and mass associated to them. Considered individually or collectively, the introduction of new buildings would be a fundamental change to the openness of this part of the Green Belt.
14. The physical presence of the new dwellings would significantly reduce the openness of the Green Belt through the introduction of built form and mass where there is presently none. This is both a spatial and visual factor which I must have material regard to.
15. Although there are in the order of 200 or so houses within the Dormans Park area, the appeal site sits on the periphery of other established properties. Because of the peripheral location involved the change to openness would be magnified. The resultant change would also lead to a very low prospect of redeemability of the site to its present state of openness.
16. Therefore, I find that the scheme would be harmful to the openness of the Green Belt. It would conflict with Paragraphs 133 and 134 (c) of the Framework which combined state that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; and to assist with safeguarding the countryside from encroachment as one of its five main purposes.

Character and appearance

17. The appeal site comprises of trees and grassland. Nearby properties in the vicinity have varying designs with a spacious and low-density layout. Trees and greenery dominate views and provide an attractive component of the area. The appeal site has a distinctive undeveloped and open character. It forms part of a wider network of undeveloped areas of countryside which encompass ancient woodland.
18. The appeal scheme would urbanise the site. The resultant change would be discordant with the otherwise predominantly open and rural aspect of this part

¹ Wood v SSCLG and Gravesham Borough Council [2015] EWCA Civ 195; David Tate v Northumberland CC [2017] EWHC 664 (Admin); and Braintree District Council vs SoS [2017] EWHC 2743 (Admin)

of Dormans Park which has dominant verdant qualities. I accept that the new dwellings could be designed in a variety of ways. Nonetheless, the development of the site would still unduly compete with the predominantly open characteristics of the area within a sylvan setting. The resultant urbanisation would be visually harmful. Therefore, the consideration of a Technical Detailed Consent (TDC) at a later point where different designs could be considered would not overcome my concerns.

19. I find that the development would harm the character and appearance of the area. It would conflict with Policy DP7 of the TLP which requires that development should integrate effectively with its surroundings, reinforcing local distinctiveness and landscape character. It also conflicts with: Policies CSP18 and CSP21 of the Tandridge District Core Strategy 2008 (TDCS); as well as the aims of the Surrey Design Guide (2002) which in combination seek to protect the character and distinctiveness of the District's landscape, and countryside.

Ecology/Special Protection Area

20. The ecological impacts of the development in dispute are twofold. They relate to the potential effects to ecology on the appeal site itself, as well as the wider effect to the Ashdown Forest Special Protection Area (SPA).
21. I note that the appeal site is in a rural location where there could be a wide variety of species using the land for foraging or as a natural habitat. I am cognisant that both protected and non-protected species may be directly impacted upon. Although some of the vegetation on the site has been cut back, what remains could still contain important flora and fauna. There is no technical survey information informing what the ecological impact would be.
22. I appreciate that ecological protection matters have been subject to a delay in being raised prior to the appeal. Nevertheless, that does not diminish the importance of the issue within the 'in principle' parameters triggered for consideration. This is underlined by statutory obligations to protect biodiversity under: Schedule 5 of the Wildlife and Countryside Act 1981 as amended; Regulation 39 of the Habitats Regulations 1994 (European protected animal species), and the provisions of Section 41 of the Natural Environment & Rural Communities Act 2006.
23. Considering the potential risks to ecology in the locality it would not be appropriate to rely solely on the TDC stage. Adequate information would need to inform a decision on ecological interests at this point. This is also to ensure any on site mitigation, if it is acceptable, is realistic and achievable.
24. Furthermore, main parties acknowledge that the appeal site is within 7km of the Ashdown Forest SPA. With respect to this cross-boundary issue, I note that the Council's emerging new Local Plan has recently been withdrawn and therefore carries no weight. Nonetheless, there is evidence of aspirations to secure financial contributions towards: strategic access site management; monitoring of the SPA; as well as suitable alternative green space provision as a means of mitigating the potential effects of new residential development.
25. Article 5B (1) of the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 (the Order) provides that permission in principle cannot be given for habitats development. This is defined in Article 5B(5) as development which is likely to have a significant effect on a European Site

(either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site; and for which the competent authority has not given consent, permission, or other authorisation in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). The SPA is defined as a European Site by the Habitats Regulations.

26. Therefore, if a proposed permission in principle development is likely to have a significant effect on a qualifying European Site without any mitigating measures in place, an Appropriate Assessment (AA) must be carried out. To this end, I acknowledge that new residential development within the zone of influence of the SAP has the potential to result in increased visitor and vehicle trips to it, thereby resulting in ecological effects. To reach a conclusion that there would be no adverse effects on the integrity of the SAP, there should be no reasonable scientific doubt as to the absence of such effects. But in this case, there is no evidence for me to be assured of that.
27. The appellant relies on appeal references APP/M3645/W/18/3198090 and APP/M3645/W/18/3205537 to support his view that the impact to the SPA would be minimal. But I do not have the full background case details informing those decisions to give them any significant weight.
28. I accept there may be scope for mitigation measures to be pursued at TDC stage, and that in legal terms an obligation could be entered into at any time. But there is nothing to suggest what mitigation the appellant proposes, or, if it would realistically be secured and delivered. Thus, taking a precautionary approach it is not possible for me to reach a conclusion that there would be no adverse effects on the integrity of the SPA.
29. Accordingly, I find that the appeal scheme is likely to result in harm to biodiversity interests both through the development of the site itself and the wider effects to the SPA. This would conflict with: Policy CSP17 of the TDCS which seeks to protect biodiversity; Policy DP19 of the TLP which seeks to conserve and enhance the natural environment inclusive of sites of biological importance, alongside appropriate mitigation measures if required. There would be conflict with Section 15 of the Framework which seeks to conserve and enhance the natural environment. It would also conflict with Article 5B (1) of the Order.

Whether very special circumstances exist

30. The Government attaches great importance to Green Belts. The content of the Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
31. The Framework also advises that planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
32. The appellant suggests various factors, which in combination, should amount to the very special circumstances needed to justify the proposal. These include that: the proposal would not lead to the creation of isolated homes in the

countryside and is close to services; the five purposes of the Green Belt identified by the Framework would not be impacted upon; the assessment related to a new Local Plan concludes that Green Belt openness is not impacted upon due to existing residential development; there is residential development either side of the appeal site; there is a chronic housing shortage and a need for new homes within the Tandridge area, which has a 1.43 year housing land supply; the Council has been sanctioned to provide a 20% buffer to housing land supply; and boosting local tax revenue/new homes bonus resulting from the scheme would be beneficial.

33. With respect to those points, I have already found that the scheme is inappropriate development and would result in harm the openness of the Green Belt. In doing so it would also conflict with one of the five purposes identified by the Framework requiring Green Belts to assist in safeguarding the countryside from encroachment. Whilst the other remaining purposes may not be directly impacted upon, they do not weigh in favour of the scheme.
34. I acknowledge that the Council's now withdrawn new Local Plan undertook a review of the Green Belt. But there is no adopted strategic change to the existing development plan for the area to give any significant weight to. The Green Belt policies of the existing development plan are consistent with the Framework and carry full weight.
35. Main parties acknowledge that there is an acute housing shortfall in the district and the Council is not able to demonstrate a five-year housing land supply. The provision of between 5 and 9 homes would no doubt contribute positively to the district's housing need. I accept that there would be social and economic benefits from increasing local housing supply and allowing construction activity to take place. The area is also well served by public transport owing to a nearby train station, as well as bus stops located at both entrances to Dormans Park allowing access to services. Additionally, there are footpaths giving access to the shops and services available in Baldwins Hill and Dormansland around 1km away.
36. Whilst those factors weigh in favour of the scheme the lack of a 5-year housing land supply and housing pressure within the district is not in itself an unusual occurrence. Many rural Green Belt locations also have similar levels of accessibility to services. Those factors therefore do not outweigh the harm arising from the inappropriateness of the development and the reduction in the openness of the Green Belt.
37. I have carefully considered all of the appellant's points, but they do not individually, or collectively, amount to the very special circumstances required to justify the harm to the Green Belt or the other harm I have identified.

Other Matters

38. I acknowledge that there may have been pre-application discussions with the Council prior to the submission of the application. Nonetheless, the issues in dispute are largely consistent with the advice given. I also note that the appeal site may have been historically used for equestrian purposes but that has no bearing on the inappropriateness of the appeal scheme.
39. Furthermore, main parties have also acknowledged there are restrictive covenants on the land. But those restrictions are factors which fall outside the

scope of relevant planning policies and are not pivotal to whether permission in principle should be granted or determinative to the outcome of the appeal.

Planning Balance and Conclusion

40. Whilst development plan housing policies for the area are out of date, the policies most relevant to determining the appeal are not. The policies that are most relevant are also consistent with the terms of the Framework.
41. Even if housing policies were to be considered as the most relevant to the outcome of the appeal, the Framework specifically lists Green Belt locations and SPA's of particular importance. Its policies provide me clear reasons for refusing the development when considering the impact to them.
42. Moreover, it is also the case that the adverse effects of the scheme would significantly outweigh the limited boost to housing supply, and any associated economic and social benefits of that. As a result, the appeal proposal would not result in a sustainable form of development which the Framework supports.
43. I have found there would be conflict with the Council's development plan in relation to: the protection of the Green Belt from inappropriate development and encroachment impacting on its openness; the character of the area; as well as ecological and SPA impacts which would all lead to substantial harm. Overall, I do not find that any of the benefits listed by the appellant would outweigh the demonstrable harm identified. There are no other material considerations which lead me to the conclusion that the Council's development plan should not be followed when applying the content of the Framework.
44. For the reasons given above permission in principle should be refused, and the appeal does not succeed.

M Shrigley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Angus Eitel	Architect
Mr Alastair Harrison	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Miss Georgina Betts	Principal Planning Officer
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INTERESTED PARTIES:

Cllr Lesley Steeds
Mr William Davies

Mr Bob Paterson

Mr Eric Richardson

Mr David Bright

Mr Timothy Sheppard

Mrs Sue Sheppard

Mr Howard Bates

Ms Lisa Liggins (Parish Council)

LIST OF DOCUMENTS SUBMITTED AT THE HEARING:

Surface water flow technical information plan