

Appeal Decision

Site Visit made on 20 April 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th June 2021

Appeal Ref: APP/H2265/W/20/3260498

Winsor Works and Scarbutts, London Road, Addington, West Malling, ME19 5AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Coldrum Homes Ltd against Tonbridge and Malling Borough Council.
 - The application Ref 19/01067/FUL, is dated 1 May 2019.
 - The development proposed is redevelopment of the site to provide x10 detached dwelling houses with associated parking, turning, landscaping and improvements to access road.
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Decision

1. The appeal is dismissed and planning permission for redevelopment of the site to provide x10 detached dwelling houses with associated parking turning landscaping and improvements to access road is refused.

Preliminary Matters

2. The appellant has submitted a duly executed unilateral undertaken which I have taken into account. It provides for a Public Open Space Contribution to Tonbridge and Malling Borough Council and for Education and Library Contributions to Kent County Council and I have contemplated this further under other considerations.

Main Issues

3. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt, including its effect on openness;
 - whether the proposed development would adhere to the Council's strategy for redevelopment of the site;
 - whether the proposed development would provide acceptable living conditions for future occupants, with particular reference to loss of light and noise and disturbance; 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 the proposal would be inappropriate development in the Green Belt

4. The appeal site is situated in the Metropolitan Green Belt and comprises a large open site which is accessed via an existing track which slopes steeply down from London Road, with the adjacent development being set on higher ground. The site formerly comprised industrial buildings, one directly parallel to the road and one set further back into the site. These have recently been demolished and the site cleared.
5. Policy CP3 of the Tonbridge and Malling Borough Council, Local Development Framework Core Strategy 2007 (CS) establishes the extent of the Green Belt and sets out that national policy will be applied. The National Planning Policy Framework (the Framework) indicates that other than in connection with a small number of exceptions, the construction of new buildings should be regarded as inappropriate development in the Green Belt. Paragraph 145(g) of the Framework allows for limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt than the existing development. Both parties accept that the site comprises previously developed land.
6. The site previously contained several existing buildings but these have been cleared. Therefore, the erection of new structures would erode the openness of the Green Belt as built development would be established where there is none presently. In any event, the Site Location Plan demonstrates that much of the site, was relatively open with large areas of hardstanding even when the existing buildings were in place.
7. Notwithstanding the above, the proposal would erode openness even when assessing it spatially and visually against the extent of built form that previously occupied the site. This is because the proposed development would lead to the introduction of ten two storey detached dwellings with associated garages that would extend across the whole of the site whereas the previous buildings did not. In addition, the proposed dwellings would be sizable in terms of their footprint, comprising both 4 and 5 bedroom dwellings.
8. The evidence before me within the appellant's planning statement states that the built form and footprint of development, including the overall height of the buildings, would increase above that which previously existed on site. Although the development would be set down from the road, the proposed dwellings would also be clearly visible on the site and stridently intrude upon the openness of it. This, taken with the notable increase in built form on the site, would significantly harm the openness of the Green Belt.
9. Therefore, having regard to the lack of built development on the site and the overall size and scale of the dwellings proposed, the appeal scheme would have a greater impact on the openness of the Green Belt than the existing development. It would therefore be inappropriate development which is, by definition, harmful to the Green Belt.

Redevelopment Strategy

10. The site is allocated by Policy M1 of the DLA¹ as a major developed site in the Green Belt. Paragraph 5.1.2 of the DLA indicates that the redevelopment of such sites is favoured for an environmentally beneficial use and that the allocation indicates their suitability in principle for redevelopment. The policy goes on to detail a number of criteria that must be met in order for any redevelopment to be acceptable, including that the redevelopment will bring significant environmental benefits.
11. The policy also includes site specific requirements including the need for mitigation measures identified through a Flood Risk Assessment and the investigation and remediation of any land contamination. However, there is no dispute between the parties in relation to these matters and the evidence before me indicates that these matters have been satisfactorily addressed. Therefore, the scheme accords with the policy in this regard.
12. The other environmental benefits associated with the scheme include environmental enhancements in the form of planting, bird and bat boxes and access holes for small mammals in the fence. There is also the creation of an ecological buffer for water voles and reptiles. These enhancements mitigate the impacts from the development and enable the retention of wildlife corridors.
13. It has not been demonstrated that these measures in isolation would meet the requirements for a significant environmental benefit and therefore the proposal would conflict with Policy M1. However, the policy predates the Framework as a result of its more restrictive requirements which exceed those of the Framework. Therefore, I have given the conflict with this policy limited weight.

Living Conditions – Future Occupiers

14. The proposed development would place residential dwellings directly behind the West Malling Industrial Park located on London Road. However, existing residential development is located to either side of it.
15. Having regard to the likelihood of disturbance for future occupiers from the nearby commercial uses, given the degree of surrounding residential development, the operation of this site is already likely to be subject to restraint on its operation to protect existing residents from noise and disturbance. I have also not been provided with any evidence to suggest that the uses within the industrial park are particularly noisy or have proved unsatisfactory to existing residents.
16. Furthermore, the Council's Environmental Protection Officer has had regard to the submitted noise report and are satisfied that the report confirms adequate internal and external levels will be attained within the proposed dwellings. This takes into account both road traffic noise and those from the nearby businesses. Therefore, I am content to rely on the expert views provided within the appellant's evidence. This is supported by both the Council's Environmental Protection Officer and the overall conclusions of the appellant's noise report which has been carried out by a suitably qualified person.

¹ Tonbridge and Malling Borough Council Local Development Framework, Development Land Allocations Development Plan Document April 2008

17. It has been put to me that the existing screening provided by the trees on the boundary of the site could lead to overshadowing of the gardens and rear elevations of plots 1-7 which could lead to pressure for the trees to be felled. However, the trees along the boundary are well spaced and the boundary of the site currently receives a reasonable amount of light, due to the height of the canopy and the spacing between the trees. Therefore, I am satisfied that with appropriate management of the trees, which could be controlled by a suitably worded condition in the event the appeal was otherwise acceptable, the gardens would receive an acceptable level of light.
18. Therefore, the development would provide suitable living conditions for future occupiers with particular regard to noise and disturbance and adequate light in accordance with policy CP24 of the CS which requires development to be designed to respect the site and its surroundings.

Other Considerations

19. I have had regard to the appellant's comments in relation to the five purposes of the Green Belt, set out under paragraph 134 of the Framework. I agree with the appellant that paragraph 145 (g) does allow for the redevelopment of previously developed land subject to some qualification and therefore some form of development at the appeal site may not conflict with the purposes of paragraph 134 (c). However, in this instance there would be an erosion of openness and therefore the proposal would amount to sprawl and encroachment. In addition, whilst the development would meet the purposes of recycling derelict land as set out within paragraph 134(e) it would do so in a way that would erode openness.
20. Therefore, I give these factors limited weight bearing in mind that it is a fundamental aim of the Framework that Green Belts are protected and that any redevelopment such as that proposed should not have a greater impact on the openness of the Green Belt.
21. The appellant has indicated that they have a credible fallback position to reuse the site for commercial uses. The site is allocated under policy E2 of the DLA as Other Employment Areas. This policy sets out that these areas are considered to be suitable for continued employment uses. However, evidence was submitted with the application to demonstrate the site had been marketed with little or no interest, that there are other sites readily available in the locality and the costs of redeveloping the site would make it unviable to retain the existing employment use. As such, there is uncertainty as to whether the site could be brought back into commercial use. Therefore, I have given the fallback position limited weight.
22. The appellant has also submitted two applications for Lawful Development Certificates to establish the use of the site for B2 purposes and for a concrete crushing plant. However, even if these were to be approved, any future development of the site would likely require planning permission, noting that the existing buildings on the site have been demolished. Therefore, I have given this point limited weight, such that it has not altered my overall decision.

23. The existing appeal site cannot be described as attractive even with the existing buildings removed. However, views into the site are currently limited as a result of the change in levels from the road and the lack of built development within the site. The proposed development, as a result of its overall scale and distribution across the site would therefore lead to a significant level of visual impact. Therefore, the scheme's effect on the character and appearance of the area resulting from the redevelopment would be neutral in the balance.
24. The previous use of the site for commercial and industrial purposes is a less satisfactory use when considering the relationship with existing residential development either side of the site and as such the residential use of the site would likely be more compatible. The redevelopment of the site would result in the reduction in traffic generation from heavy vehicles, following the completion of the construction works. The scheme also results in the decontamination and ecological benefits. Although these matters do not meet the requirements of policy M1, in terms of being significant, they do weigh in favour of the scheme and I have given these considerations moderate weight having regard to the overall scale of the development proposed.
25. The Council accepts that it cannot demonstrate a five-year housing land supply at present. Paragraph 11 of the Framework states that where the policies that are most important for determining the application are out of date, permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 sets out that these policies include those relating to land designated as Green Belt. Given my findings in relation to the Green Belt there is a clear reason for refusing the development proposed and I am not required to apply the tilted balance in this respect, albeit that the delivery of housing when there is a housing land supply deficit is a benefit to which I have given moderate weight.
26. The unilateral undertaking facilitates a financial contribution towards public open space provision, education and libraries. I am satisfied that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related to it in scale and kind. On this basis, I consider the agreement accords with the criteria of Regulation 122 if the CIL and with paragraph 56 of the Framework. I can therefore reasonably take it into account.
27. The open space contribution will provide off site provision for parks, gardens, outdoor sports facilities and play areas and the library and education contributions will provide for provision at local schools and additional books for the library. Therefore, these benefits could be secured for the locality as a result of the proposed development and therefore I have given this moderate weight.

Whether there would be Very Special Circumstances

28. Policy CP3 of the CS, by virtue of its link to national planning policy, requires that inappropriate development will not be permitted unless very special circumstances can be demonstrated. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

29. The appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. There would also be significant harm to the openness of the Green Belt. Paragraph 144 of the Framework requires substantial weight to be given to any harm to the Green Belt. Alternatively, the other considerations identified are collectively of only moderate weight in favour of the proposal.
30. Accordingly, the harm to the Green Belt is not clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development do not exist.
31. Thus, the proposal would fail to comply with policy CP3 of the CS, which requires the application of national Green Belt policy to the extent of the Green Belt. It would also be contrary to policy M1 of the DLA.

Other Matters

32. The appellant has made reference to the advice received as part of the pre-application process and the conduct of officers during the handling of the application, however, these are not matters for my deliberation in the context of a planning appeal.

Conclusion

33. The proposal would therefore conflict with the development plan and there are no other considerations that outweigh this conflict. For the reasons given above I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR