



Appeal Decision

Site visit made on 13 July 2021

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2021.

Appeal Ref: APP/M3645/W/20/3262108

Woodham Nursery, Eastbourne Road, South Godstone, RH9 8JB

- 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 Mr Henry Powers against the decision of Tandridge District Council.
 - The application Ref TA/2020/1440, dated 14 August 2020, was refused by notice dated 7 October 2020.
 - The development proposed is demolition of glasshouse and some other structures. Erection of detached bungalow (outline planning for access and layout).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have adopted the description of the development as set out in the decision notice as this more accurately describes the appeal proposal. I have also determined the appeal on the basis that it responds to the refusal of outline planning permission, and not the refusal of reserved matters, as is incorrectly shown in answer to question F on the Appeal Form.
3. Following my site visit, I raised various concerns with the parties over the accuracy and level of detail on the submitted plans. In response, the Appellant submitted revised plans. These showed the inclusion of the adjacent watercourse within the application red line, and included a revised existing and proposed site layout plan. Whilst the latter have a scale bar, there is no actual scale or 'A' size on either plan. If they are the same scale as the original plans, then, notwithstanding the inclusion of the watercourse, the existing (and proposed) plan appears to show a much larger appeal site and also details that differ from those on the original existing plan. In view of this, I remain unconvinced that either of the submitted existing plans accurately show the true extent of the current layout in terms of its access, and the positioning and extent of existing structures.
4. In relation to the proposed site layout, the footprint of the new dwelling on the revised plan is different to that originally shown, as is its orientation to the existing café. There also remains a lack of detail on this plan, bearing in mind that 'layout' has been submitted for determination. All of these details are of importance to the Green Belt assessment that is required.
5. Even so, whilst the quality of the submitted plans remains, in my view, poor, I have proceeded to determine the appeal having regard to the above concerns

and in reaching my decision I have taken into consideration both the original and revised application plans.

6. Both parties have made submissions in relation to the lawfulness of the structures on site and the mixed commercial and residential use. Whilst the Appellant has submitted aerial images, these are not, in my view, clear or on their own conclusive in terms of ascertaining which existing structures and uses have taken place continuously on the appeal site and are lawful. It appears from the history of the site that some structures, granted planning permission, have since been removed. Whilst the Appellant has provided, with their Final Comments, copies of older planning permissions, it is also not precisely clear to me which existing structures these relate too.
7. It is not for me to determine the lawfulness of the existing structures and uses in the context of an appeal that has been submitted under section 78 of the Town and Country Planning Act. I can only consider the proposal that is before me, which is for a new dwelling. Even so, it remains open to the Appellant to submit a Certificate of Lawful Development to establish the lawfulness of the existing structures and uses, and the determination of any such application would not be affected by my decision on this appeal. I have therefore proceeded to determine the appeal on the basis of the evidence and the proposal that is before me.
8. On 20 July 2020 the Government published a revised version of the National Planning Policy Framework (July 2021) (Framework). However, the Green Belt policies that are relevant to this appeal have not changed and there was no need, therefore, to invite the parties to make further submissions in response to the revised Framework. The paragraph numbering for the Green Belt policies has changed and I have highlighted those changes in my decision.

Main Issues

9. The main issues are:
 - (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and development plan policy;
 - (b) The effect of the proposal on the character and appearance of the area, the living conditions of future occupiers and the compliance with local and national policies on flood planning; and
 - (c) 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 development.

Reasons

Inappropriate development in Green Belt

10. Paragraph 149 of the Framework (previously paragraph 145) states that the construction of new buildings in the Green Belt is inappropriate development unless it falls within one of the exceptions listed a) to g) (inclusive). Exception g) to paragraph 149 states that the complete redevelopment of previously developed land, whether redundant or in continuing use, is not inappropriate development provided it would "*not have a greater impact on the openness of the Green Belt than the existing development.*" Exception g) excludes

"temporary buildings", which is consistent with Annex 2 to the Framework where it defines previously developed land as *"Land 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 of the curtilage should be developed) and any associated fixed surface infrastructure."* A further exception under paragraph 149 g) relates to proposals to re-use previously developed land to meet affordable housing needs. That exception does not apply in that the appeal proposal is for market housing.

11. Part G of Policy DP13 of the Tandridge Local Plan Part 2: Detailed Policies (July 2014) (TLP), repeats the provisions of the Framework in relation to the redevelopment of previously developed land, and as such and in this respect, policy DP13 is consistent with the Framework.
12. The assessment required under paragraph 149 g) is whether the appeal proposal would have a greater impact on the openness of the Green Belt compared to those elements of the existing development that would be replaced. The Appellant's evidence states that the existing glasshouse, mobile home, sheds and other greenhouses would be removed. However, whilst the glasshouse and mobile home are shown on the existing plan, the sheds and other greenhouses to be removed are not clearly shown. It is unclear therefore as to precisely which structures are being referred to.
13. The impact on openness has a spatial as well as a visual aspect. There is no agreed schedule of existing and proposed measurements, other than those relating to the existing glasshouse, set out in the Appellant's Statement. No figure is provided for the proposed footprint of the new dwelling. In the absence of any detailed calculations and mindful of the concerns over the accuracy of the submitted plans, I have based my assessment on a combination of the submitted plans and my observations on site, and reached a judgement on the basis of that evidence.
14. The proposed layout plans appear to show that part of the new dwelling would be sited further south of the existing glasshouse, encroaching onto land that is open. Whilst no details of the scale of the new dwelling have been submitted, the appeal seeks consent for a bungalow, a design that would traditionally incorporate a pitched roof. However, the illustrative front elevation included in the Appellant's Statement, shows a dwelling with a flat roof. Even so, with the requirement to meet minimum floor to ceiling heights, the overall height of the new dwelling would be similar or would exceed that of the ridge peaks to the existing glasshouse. The latter would appear more likely given that the Appellant has confirmed that the new dwelling would need to be raised by a minimum of 300mm above ground level to mitigate any potential flood risk.
15. The proposed dwelling would have much fuller elevations compared to the ridge design of the glasshouse, as well as a much more solid and bulkier appearance than the translucent glazing to the glasshouse. As a new purpose built dwelling, it would also have a more permanent appearance. Furthermore, the appeal proposal would introduce a dedicated parking and turning area, and whilst not shown on the submitted plans, it would require the introduction of new boundary treatments, other residential paraphernalia, external lighting, an electric charging point, refuse storage and a formal garden layout, all of which would contribute to an increase in the visual and spatial impact of the appeal proposal compared to existing. On balance, therefore, the appeal proposal

would, in my judgement, have both a spatial and visual impact on openness compared to the existing development that it would replace.

16. Whilst the appeal site benefits from screening, the proposed development would be visible from various public viewpoints, including from the A22, to both passing vehicles and pedestrians (using the pavement on the western side of the A22), and also from the customer car park immediately to the south that serves the adjoining plant nursery.
17. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and its essential characteristics are, therefore, its permanence and openness. In my judgement, the appeal proposal, would, in visual and spatial terms, have a greater impact on the openness of the Green Belt than existing development. The Framework advises at paragraph 137 (previously paragraph 133) that openness is an essential characteristic of Green Belts, and the appeal proposal would, therefore, cause harm in this regard.
18. Paragraph 148 of the Framework (previously paragraph 144) states that “any” harm to the Green Belt should be accorded substantial weight. The appeal proposal would have a greater impact on openness compared to existing development, resulting in harm to the Green Belt and in those circumstances, the exception under paragraph 149 g) of the Framework does not apply. It would, therefore, represent inappropriate development in the Green Belt, which Paragraph 147 of the Framework (previously paragraph 143) states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
19. Accordingly, I find that the appeal proposal would fail to accord with Policy DP10 and DP13 of the TLP and paragraph 149 g) of the Framework.

Character and appearance, future occupiers living conditions and flood risk

20. Setting aside the static caravan and dilapidated mobile structure, which the Appellant contends has been used as the owner’s residence, the appeal site is used as a commercial nursery. As well as the various structures on site, there are large areas set aside for the display, sale and storage of plants, flowers, trees, fencing, compost, bark, logs and garden pots/ornaments. These are stored or displayed on racking, in timber sheds, on pallets or in partly enclosed areas. There is also an open area for parking a tractor and fork lift truck. As a consequence, the whole site has an extremely poor and untidy appearance, which is highly visible from public vantage points and significantly detracts from the rural character of the area.
21. All of the nursery activities and the sales/display/storage areas, referred to above, provide the context for the new dwelling, which would be located at the rear of the site with no effective differentiation from the nursery use. As the nursery is being retained, the proposed dwelling would effectively be shoehorned into the southern corner of the site, which narrows quickly to a point and is enclosed by the watercourse and mature trees.
22. Within this context, the proposed dwelling does not sit comfortably on the site. The constrained nature of this part of the site results in a new dwelling that is cramped, awkwardly sited and incompatible with the commercial use of the site. The appeal proposal would not integrate well or effectively with its

- surroundings. Neither, by reason of the constrained layout and proposed mixed-use arrangement, would it respect or reflect the context or character of its rural surrounds. Accordingly, the appeal proposal would fail to accord with policy CSP18 and CSP 21 of the Tandridge District Core Strategy (October 2010) (TCS) and policy DP7 of the TLP. These policies seek, amongst other requirements, to ensure that new development respects its setting and context, and integrates effectively with its surroundings.
23. On both the original and revised plans, the proposed dwelling is sited close to the existing café, which is to be retained. As I observed on site, the café is a substantial tall building, which largely screens views of the glasshouse from the A22. In my view, the existing café building would have an overbearing impact on the proposed dwelling, both physically and visually. Whilst the Appellant suggests that the proposal could be designed with a front window and entrance on the corner, away from the café building, those views would be of the large untidy areas of plants, fencing and other garden produce, as well as a large unsightly log/tractor enclosure.
24. The western elevation of the new dwelling would be sited close to the watercourse and mature trees. Similarly, the eastern elevation would face a more extensive band of mature trees, separated only by the proposed car parking. Whilst the southern elevation of the new dwelling would face onto the proposed rear garden, this narrows quickly and a large part of it would be, for certain parts of the year, shaded by the mature boundary trees.
25. The proposed layout does not include a separate vehicular or pedestrian access to the new dwelling from the A22. Any future occupiers, whether accessing the new dwelling by vehicle or on foot or by bicycle, would therefore have to do so by navigating through the existing commercial use, increasing the likelihood for pedestrian and vehicle conflicts. Similarly, the overall environment for future occupiers, in terms of noise and disturbance, would be dominated by the comings and goings of customer traffic, deliveries and the tractor and other vehicles operated by the business.
26. Accordingly, I find that the appeal proposal would result in an unacceptable living environment for future occupiers due to its constrained layout, proximity to the café building and lack of separation from the nursery use, contrary to policy CSP18 of the TCS and policy DP7 of the TLP. These policies seek, amongst other requirements, to ensure that new development secures a satisfactory environment for future occupiers.
27. The Flood Risk Assessment (FRA) (May 2020) submitted by the Appellant was produced in support of a previous application on the whole of the appeal site for 3 dwellings. It was not produced specifically for the appeal proposal. Even so, the FRA seeks to demonstrate how flood risk is to be mitigated and the development adapted to reduce risks or be risk neutral. The Environment Agency Flood Map for Planning, reproduced in the FRA, shows that the southern part of the appeal site, where the proposed dwelling would be sited, is in Flood Zone 3.
28. Part E to Policy DP21 of the TLP states that development within Flood Zone 3 will only be permitted where three criteria are met: firstly, that sequential and, where appropriate, exception tests have been undertaken in accordance with the policies of the Framework; secondly, that an FRA demonstrates how the

proposal would reduce flood risk or be risk neutral; and, thirdly, that design and/or mitigation measures are incorporated to reduce the risks identified.

29. This policy is consistent with paragraphs 159 – 169 of the Framework (previously paragraphs 155 – 165) and the 'Flood risk and coastal change' section of the Planning Practice Guidance (PPG). Both state that the objective of flood planning is to ensure that inappropriate development in areas at risk of flooding, whether now or in the future, is avoided. Strict tests are therefore set to protect people and property from flooding. Where these tests are not met, development should not be allowed.
30. In line with the definitions within the PPG, there is a 'high probability' of flooding on the appeal site. The PPG classifies the type of residential development proposed as being 'more vulnerable'. Where, as in this case, the site is not allocated for development, the Framework and PPG require a sequential test to be applied and, if necessary, an exception test, before planning permission can be granted. The purpose of the sequential test is to steer new development to areas with the lowest risk of flooding. As paragraph 162 of the Framework (previously paragraph 158) states, development should not be permitted if other appropriate sites are available to accommodate the development in areas with a lower risk of flooding.
31. The Appellant has not undertaken a sequential test, which must be passed before the exception test can be applied. As a consequence, the requirements of local and national policy of flood planning have not been addressed or met and I am not in a position therefore to consider the recommendations of the FRA, in light of the Environment Agency's consultation response (summarised in the Council's Delegated Report), further. For these reasons, the appeal proposal would not be compliant with policy DP21 of the TLP and paragraphs 159 – 169 of the Framework.

Other considerations

32. The Appellant contends that the appeal proposal would result in a significant improvement to the visual appearance of the appeal site. Whilst I accept that the removal of certain structures would improve the appearance of the site, as I found above, the existing glasshouse would be replaced by the more solid, bulkier and fuller appearance of the new dwelling, and would thus be more visually prominent. Furthermore, there are no proposals before me to improve the very poor and untidy appearance of the nursery, which, as I found above, is unsightly, highly visible from various public vantage points and detracts from the pleasant rural character of the area.
33. As a consequence, the improvement in the appearance of the appeal site as a result of the appeal proposal is, in my judgement, small and certainly not significant. Accordingly, I would only accord this consideration limited weight.

Overall Balance and Conclusion

34. I have found that the appeal proposal would be harmful to the Green Belt as it would constitute inappropriate development as a result of the greater impact the proposed development would have on openness than existing development. Paragraph 148 of the Framework (previously paragraph 144) requires substantial weight to be given to "any" harm to the Green Belt. It further states that very special circumstances will not exist unless the potential harm

to the Green Belt is clearly outweighed by other considerations. The level of harm to the Green Belt would, in my judgement, be moderate, and the other consideration in this case does not outweigh the harm I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

35. I have also found that the appeal proposal would not be compatible with or integrate well with its context and the rural character of the area; that the proposal would result in unacceptable living conditions for future occupiers; and, that it fails to meet the requirements of local and national policies in relation to flood planning. There are benefits to the appeal proposal, including securing one new residential unit contributing to the supply of new housing in the area, as well as short term economic benefits from construction and support for local services and facilities. Even so, the proposal is for market housing and does not seek to meet any identified affordable need. In view of this, I would only accord these benefits limited weight and they would clearly not be sufficient to outweigh the harm I have identified to the Green Belt or the other harm that results from the proposal to the issues referred to above.
36. The Council acknowledge that they are unable to identify a 5-year supply of housing land and that the relevant housing policies of the development plan are out of date. In these circumstances, paragraph 11 d) i) of the revised Framework requires planning permission to be granted unless the application of the policies in the Framework that protect areas of particular importance provide a clear reason for refusing the development proposed. Footnote 7 confirms that the policies referred to are those in the revised Framework, rather than those in the development plan, and include policies relating to "*land designated as Green Belt.*"
37. Accordingly, the application of the policies in the Framework that seek to protect designated Green Belt land provide a clear reason for refusing the appeal proposal. The presumption in favour of sustainable development envisaged in the Framework does not apply in this instance.
38. The appeal proposal conflicts with the development plan and Framework taken as whole and there are no material considerations that outweigh that conflict.
39. For the reasons given above and having taken all the matters raised into account I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR