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## Appeal Decisions

Site Visit made on 14 September 2021

**by J Bowyer BSc(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 September 2021**

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### **Appeal A Ref: APP/M3645/W/20/3262466**

#### **Torwood Farm Torwood Lane, Whyteleafe CR3 0HD**

- 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 Kris Collett, Castlemere Developments against the decision of Tandridge District Council.
  - The application Ref TA/2020/752, dated 7 April 2020, was refused by notice dated 29 July 2020.
  - The development proposed is demolition of existing buildings and construction of 2 detached houses along with associated access and landscaping.
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### **Appeal B Ref: APP/M3645/W/21/3267962**

#### **Torwood Farm Torwood Lane, Whyteleafe CR3 0HD**

- 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 Kris Collett, Castlemere Developments against the decision of Tandridge District Council.
  - The application Ref TA/2020/2015, dated 2 November 2020, was refused by notice dated 27 January 2021.
  - The development proposed is demolition of existing stable buildings. Erection of 2 x five bedroom detached houses along with associated access and hardstanding.
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### **Appeal C Ref: APP/M3645/W/21/3269408**

#### **Torwood Farm Torwood Lane, Whyteleafe CR3 0HD**

- 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 Kris Collett, Castlemere Developments against the decision of Tandridge District Council.
  - The application Ref TA/2020/2183, dated 6 December 2020, was refused by notice dated 15 February 2021.
  - The development proposed is demolition of existing buildings. Erection of 2 x detached dwellings with associated detached car ports, hardstanding and landscaping alterations'.
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## **Decisions**

### **Appeal A Ref: APP/M3645/W/20/3262466**

1. The appeal is dismissed.

### **Appeal B Ref: APP/M3645/W/21/3267962**

2. The appeal is dismissed.

### **Appeal C Ref: APP/M3645/W/21/3269408**

3. The appeal is dismissed.

## **Procedural Matters**

4. As set out above, there are 3 appeals before me. There are some differences between them, including in the layout, scale and appearance of the proposed buildings, and I have considered each proposal on its individual merits. However, given the overall similarities of the schemes and to avoid duplication, I have dealt with the appeals together except where otherwise indicated.
5. The descriptions of development entered on the respective appeal forms vary from those stated on the planning application forms. In the case of the Appeal B development, this reflects the description stated on the Council's decision notice, but neither of the main parties have provided written confirmation that any of the revised descriptions of development have been agreed. Accordingly, I have used the ones given on the original applications in the banner headings above.
6. Since the submission of the appeals, the Government published a revised version of the National Planning Policy Framework (the Framework). The main parties were given the opportunity to comment on any implications for the appeals of this change, and I am therefore satisfied that no prejudice would be caused by my consideration of the appeals in light of the revised Framework.
7. The Council's third reason for refusal of the Appeal A scheme related to concerns over whether satisfactory on-site renewable energy technology to address requirements of the Tandridge District Core Strategy 2008 (CS) would be incorporated. However, additional information was submitted with a subsequent scheme on the site indicating provision of solar panels to dwellings in compliance with relevant targets. Provision for renewable energy did not comprise a reason for refusal of the Appeal B or Appeal C schemes, and the Council confirms that had the additional information been submitted originally as part of the Appeal A scheme, it would also have been acceptable. I see no reason to take a different view, and in the circumstances, I am satisfied that it would in this case be appropriate to secure further details of provision for renewable energy through a planning condition were I to find the Appeal A development otherwise acceptable. I have framed the main issues accordingly.

## **Main Issues**

8. In light of the above and the location of the appeal sites within the Green Belt, the main issues in Appeal A, Appeal B and Appeal C are:
  - i) whether or not the proposal would be inappropriate development in the Green Belt;
  - ii) the effect of the proposal on the character and appearance of the area; and
  - iii) if the development would be 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 it.

## **Reasons**

### *Whether Inappropriate Development*

9. The Framework identifies that inappropriate development is, by definition, harmful to the Green Belt. It outlines that the construction of new buildings should be regarded as inappropriate in the Green Belt, but specified exceptions

include the partial or complete redevelopment of previously developed land (PDL) which would not have a greater impact on the openness of the Green Belt than the existing development.

10. The definition of PDL within the Framework excludes land that is or was last occupied by agricultural or forestry buildings, but from the evidence before me and my observations at my visit, I have no firm reason to disagree with the main parties that the site is currently in equestrian use. Whether or not the site has historically been used for agriculture, it would not therefore be excluded from the definition of PDL. Accordingly, it is necessary to consider whether the proposals for redevelopment of the site would have a greater impact on the openness of the Green Belt than the existing development.
11. In this regard, the appellant has drawn my attention to the judgement of the Supreme Court in *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3. Broadly, this confirms that there is no express or implied requirement to consider visual impacts as part of the analysis of the effect of development on Green Belt openness. However, while there may not be a requirement to do so, my reading of the judgement does not establish that visual impacts may not be taken into account. Instead, it includes commentary that the matters relevant to openness in any particular case, and how visual effects may or may not be taken into account, are matters of planning judgement, not law.
12. I further note advice within the Planning Practice Guidance that assessing the impact of a proposal on the openness of the Green Belt requires a judgement based on the circumstances of the case which may need to take into account a number of matters including that openness is capable of having both spatial and visual aspects. The Framework confirms that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. I appreciate that the visual quality of the landscape is not in itself an essential part of the 'openness' for which the Green Belt is protected, but my reasoning below makes clear that I consider the appeal proposals would all affect the visual component of openness. In my judgement, these visual effects would be material, and should in these cases be taken into account.
13. Torwood Farm includes a number of structures including stables and a riding arena as well as areas of hardstanding. Spatially, there is no dispute between the main parties that all 3 appeals would result in a significant reduction in the area of hardstanding on the site. For Appeal A, there is also agreement between the parties that the footprint of buildings would be reduced by around 82sqm, but that against this there would be an increase in the volume of buildings from around 1,339m<sup>3</sup> to 1,424m<sup>3</sup> (an increase of around 85m<sup>3</sup>).
14. For appeals B and C, the Council suggests that there would be increases in the volume of buildings to around 1,491m<sup>3</sup> (Appeal B) and to around 1,441m<sup>3</sup> (Appeal C). However, the appellant considers that volumes would be reduced to around 1,275m<sup>3</sup> (Appeal B) and around 1,225m<sup>3</sup> (Appeal C), and that there would be greater reductions in footprint than the Council's assessment suggests. From the evidence before me, it appears that the differences are largely attributable to the inclusion of the proposed car ports within the Council's figures. I acknowledge that the car ports would be open-sided with flat roofs, and accordingly they would be of relatively lightweight appearance.

Be that as it may, parked vehicles would be likely to restrict views through the car ports to some degree when present, and they would in any event be appreciable as built structures that would be of greater height than existing fencing and other paraphernalia on the site. While the impact would not be directly comparable to solid built form, they would therefore have an impact on openness, and I consider that it would be reasonable to account for them as part of the assessment of the proposals. On that basis, I find the Council's assessments of the changes in footprint and volume to be more persuasive.

15. That said, the appellant's 'existing site buildings' drawing indicates a combined volume of around 63m<sup>3</sup> to 'Unit 13' and 'Unit 14', but I noted at my visit that these units did not appear to be present on the site. I am therefore concerned that the reductions in the footprint of all of the developments could be more limited than suggested by the main parties, and that the increase in the volume of buildings under Appeal A may also be greater. Similarly, even if I were to find that the car ports should be discounted from the Appeal B and Appeal C proposals, reductions in volume would also be more modest than claimed by the appellant. Moreover, while all 3 appeals would still result in a smaller spread of buildings across the site, the reduction from existing would be less than would be the case if Units 13 and 14, which are shown furthest from the access to the site from Torwood Lane, had been present.
16. In terms of these quantifiable measures and taking into account the above and the balance of the various differences in each of the schemes against the existing site as a whole, I find that the overall effect of all 3 appeals on Green Belt openness would be broadly neutral.
17. However, apart from a raised canopy that sits between Units 4 and 5, existing buildings on the site are single-storey structures, and all are of fairly modest height. Many are also of very limited overall size, and while several are seen together, separation between others allows some views through and helps to break up their overall mass and bulk. These factors in combination serve to reduce the visual impact of the existing development on the site. Given the scale and position of the buildings, I also saw at my visit that mature vegetation provides for significant screening from many viewpoints, including on the approach to the site along Torwood Lane from Salmons Lane where a line of substantial trees conceals much of the development. Moreover, where the buildings are visible, their generally modest scale and muted external materials including timber finishes result in a discreet appearance, particularly where they are seen together with nearby vegetation.
18. In contrast, the appeals would consolidate built form within the 2 dwellings and their accompanying garages (Appeal A) or car ports (Appeal B and Appeal C), and despite some separation, the buildings would in all cases still be fairly close together, particularly so under Appeal A. The form and design of the dwellings varies between the appeals, but all would be of relatively significant size and would include first-floor accommodation within their roofs. The roof designs with flat sections and projecting gables would further add significant mass and bulk to the upper parts of the dwellings of each scheme, emphasising their appearance of scale. They would additionally be of greater height than the buildings presently on the site, and substantially so in comparison to the limited scale of many of the existing structures. While I acknowledge that the buildings would occupy a part of the site including existing development, in combination with the overall increases in volume, I consider that there would

as a result of these factors be a marked increase in the visual presence and prominence of the development overall.

19. I accept that removal of existing hardstanding could benefit openness, but it is not readily visible from the surrounding area given its ground level position. Accordingly, the visual impact of any improvement made would be limited, particularly when balanced against the much greater height of the proposed dwellings. The generally modest height and scale of the existing buildings on the site, and particularly those located furthest from Torwood Lane, similarly moderates their visual impact, and, as a consequence, the benefit derived from reducing the spread of buildings across the site.
20. I agree with the appellant that it would be possible to exert some control over the gardens to the dwellings and provision of boundary treatment through appropriately worded planning conditions. Nevertheless, the gardens together with the dwellings themselves and associated parking would still transform the appearance of much of the site to one that was clearly residential. Notwithstanding that the overall spread of buildings may be reduced, this domestication would be urbanising and would visually set large parts of the site apart from the surrounding paddocks, woodland and open fields to this side of Torwood Lane, causing a loss of openness.
21. Furthermore, all of the proposals include removal of trees. While these may include non-native species, they nevertheless provide significant screening to the existing development. Proposed replacement landscaping would take some time to mature, and would be unlikely to provide similar coverage to that offered by the existing very large trees for a considerable period, if at all. I note the appellant's Landscape and Visual Appraisal which highlights that development on the site would be seen from only a limited area. Be that as it may, there would be some views, including from Torwood Lane and Salmons Lane where I consider that even if the entirety of the proposed developments were not visible, the height and bulk of the dwellings would be manifestly more conspicuous than the existing development.
22. Taking these factors together, all of the appeals would in my judgement significantly diminish the openness of this part of the Green Belt in visual terms. Even if I were to accept the appellant's quantitative assessment of the change in footprint and volume of buildings and notwithstanding the reduction in hardstanding, I find that any benefits of the proposals to openness in spatial terms would be more than offset by their considerable adverse visual impacts.
23. For these reasons, I find that all of the proposals would have a greater impact on the openness of the Green Belt than the existing development. The impact would be localised, but the terms of the exception specified within the Framework for limited infilling or redevelopment of previously developed land would not therefore be met. In addition to causing harm to the openness of the Green Belt, the proposals would as a consequence comprise inappropriate development which is, by definition, harmful to the Green Belt.

#### *Character and Appearance*

24. The west side of Torwood Lane is generally characterised by detached dwellings which vary in scale and architectural style but which are predominantly set within large plots with established vegetation within and on their boundaries. As a result, there is an attractive spacious and verdant character which is

complementary to, albeit distinct from, the opposite side of Torwood Lane where large areas of woodland and open parcels around the appeal site as well as the equestrian use of the site itself provide for a much more pronounced semi-rural quality and setting to the built-up area.

25. I am satisfied that the height and scale of the dwellings and associated garages/car ports would not be inconsistent with other nearby development. I also acknowledge the mixed appearance of dwellings on Torwood Lane, and note examples referred to by the appellant of nearby buildings with similar features to the proposed developments.
26. However, it is important to take into account the context and circumstances of the site itself. Whether or not the buildings would reflect the local vernacular, the proposals would introduce housing to the east side of Torwood Lane which is of distinct character to the residential development opposite. The position of the dwellings set back from the street would isolate them somewhat from neighbours, and they would stand out conspicuously against the surrounding open parcels and woodland. The contrast would be more acute in the case of Appeal A where the dwellings and garages would be of more typically suburban appearance, but despite taking inspiration from agricultural buildings, the Appeal B and Appeal C developments would still be appreciable as dwellings. They would also be served by detached car ports that would be somewhat unusual in this context, although I accept that the scale of these features would help to limit their visual impact beyond the boundaries of the site.
27. Landscaping would offer some opportunity to screen the developments and could afford them a 'woodland' setting incorporating native species. However, while it would help to soften the visual impact of the proposals and may obscure views of single storey elements, additional planting would take some time to mature, and would be unlikely to fully conceal the developments, particularly in winter. I nevertheless concur with the appellant's Landscape and Visual Appraisal submitted with Appeal A that views of the developments would be localised, and given the limited possible views I find that the visual impact of the proposal on the wider landscape would be limited.
28. Be that as it may, the development would be apparent including from Torwood Lane and Salmons Lane. In these views, I find that the proposals would result in an anomalous and intrusive encroachment of urbanising residential development to this side of Torwood Lane. In addition, while spacing around the proposed buildings may be comparable to or greater than other dwellings on Torwood Lane, I have already found above that all of the appeals would result in a marked loss of openness and would be more prominent than the existing development on the site. In combination, these factors would significantly erode the open and semi-rural character and appearance of the area and this part of the landscape. The cypress trees along the access to the site are non-native, but still add to the overall verdant character of the area and I consider that any benefit to landscape character through their removal and native replacement planting would not be sufficient to outweigh this harm.
29. I note the condition of many of the buildings on the site and additional paraphernalia as well as hardstanding. In themselves, I do not consider that these features make a positive contribution to the character and appearance of the area, but given their nature and generally low height they are fairly unobtrusive, and the site sits comfortably within its surroundings. In contrast, I

find for the above reasons that the proposals would all harm the character and appearance of the area. They would therefore be contrary to Policies CSP18 and CSP21 of the CS and Policy DP7 of the LPP2 which, amongst other things, broadly seek development that respects local distinctiveness and landscape character. There would similarly be conflict with Policies CCW4 and CCW5 of the more recent Caterham, Chaldon and Whyteleafe Neighbourhood Plan (NP) which include provisions that development should integrate well with its surroundings and preserve and enhance local character.

### *Other Considerations*

30. While it would not mitigate the harm that I have identified to the openness of the Green Belt and the character and appearance of the area, the proposals would offer potential for native planting that would be more in keeping with the landscape character of the area than the Cypress trees that would be removed, and I give some weight to this benefit.
31. The Council advises that it is unable to demonstrate a 5-year supply of deliverable housing, and has not disputed the appellant's assertion that the deficit is substantial, nor that there is no prospect of housing needs being met in the short term. The proposals would deliver 2 additional dwellings, and would accord with objectives within the Framework seeking to significantly boost the supply of housing. The benefit would be limited by the small scale of the developments. Nevertheless, the Framework notes that small and medium sized sites such as this can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. In this regard and given the housing undersupply position and that the evidence before me indicates this is set to continue in the near future, I afford the benefit great weight.
32. In light of stated support within the Framework, I also give significant weight to the use of PDL, albeit that the extent of the benefit would be similarly limited by the scale of the proposals.
33. The appellant has further drawn my attention to an appeal decision in Guildford where significant weight was given to the use of PDL as opposed to greenfield land in the Green Belt, and refers to proposals for Green Belt releases as part of the Council's emerging Local Plan. Where Green Belt land is to be released, the Framework advises that plans should give first consideration to land which has been previously-developed and/or is well-served by public transport. However, full details of sites proposed for release within the emerging plan, including whether they are greenfield or previously developed, have not been provided. Notwithstanding concerns over the soundness of the plan alluded to by the appellant, I am therefore unable to draw any firm conclusions on the relative merits of the included sites and the appeal site, including with regard to the impact of development on the Green Belt or other planning objectives more widely. On the basis of the limited information before me and given the small scale of the proposals, it is also not clear that allowing the appeals would obviate the need to identify alternative land for development within the Green Belt. Accordingly, this is a matter of limited weight in my decisions.

### **Other Matters**

34. I have had regard to representations made by interested parties on the proposals. These include concerns over ownership, but this is a private matter

between the relevant parties and not within my jurisdiction, and none of the other matters raised alter my conclusions on the main issues.

### **Planning Balance and Conclusion**

35. The Framework advises that substantial weight should be given to any harm to the Green Belt, and that 'very special circumstances' will not exist unless potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal is clearly outweighed by other considerations.
36. In accordance with the Framework, I give substantial weight to the harm that the proposals would cause to the Green Belt by virtue of inappropriateness and harm to openness. There would additionally be some harm to the character and appearance of the area. Against this harm, I give great weight to the benefit of 2 additional dwellings, significant weight to the use of PDL and some further weight to potential for native planting. However, I find in all of these cases that other considerations, both individually and collectively, do not clearly outweigh the totality of the Green Belt harm so as to amount to the very special circumstances necessary to justify the developments in the Green Belt.
37. The proposals would therefore conflict with the Framework. There would also be conflict with Policies CSP18 and CSP21 of the CS, Policies DP7, DP10 and DP13 of the LPP2 and Policies CCW4 and CCW5 of the NP. Insofar as they seek development that is sympathetic to local character and outline that proposals for inappropriate development in the Green Belt will only be permitted where very special circumstances clearly outweigh any potential harm to the Green Belt, these policies are in broad accordance with the Framework. I therefore give substantial weight to the conflict with these policies.
38. The appellant comments that the CS is out of date and not consistent with the aims of the Framework to significantly boost the supply of housing, but the presumption in favour of sustainable development outlined at paragraph 11(d) of the Framework is in any event engaged given the lack of a 5 year supply of deliverable housing. This outlines that where the policies which are most important for determining the proposal are out of date, permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
39. However, my findings are that policies within the Framework relating to Green Belt provide a clear reason for refusing the developments. In such circumstances, footnote 7 to paragraph 11 of the Framework makes it clear that the presumption in favour of sustainable development would not apply.
40. For the reasons given above, I find that each of the proposals would conflict with the development plan when it is read as a whole and material considerations do not indicate that decisions contrary to the development plan should be reached. I therefore conclude that Appeal A, Appeal B and Appeal C should be dismissed.

*J Bowyer*

**INSPECTOR**