



Appeal Decision

Site Visit made on 21 September 2020

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th November 2021

Appeal Ref: APP/H2265/W/20/3253437

237 London Road, West Malling, Kent ME19 5AD

- 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 Jonathan Wright against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/20/00444/FL, dated 25 February 2020, was refused by notice dated 22 April 2020.
 - The development proposed is described as 'Erection of a 4 bedroom chalet bungalow with associated parking'.
 - This decision supersedes that issued on 04 February 2021. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the 'Framework') has recently been published and the parties addressed this in their submissions. The Council has withdrawn its emerging local plan from examination and therefore this document no longer carries any weight when applying Paragraph 48 of the Framework.

Main Issues

3. The main issues in this appeal are: 1) Whether the proposal would be inappropriate development in the Green Belt, and its effect on the openness of the Green Belt; and 2) If the proposal would be inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether the proposal would be inappropriate development

4. The appeal site is located within the Metropolitan Green Belt on the periphery of West Malling. Policy CP3 of the Council's Core Strategy¹ states that national Green Belt policy will be applied to development in this area. In this regard, the Framework states that the construction of a new building in the Green Belt should be regarded as inappropriate development unless it would fall within a closed list of stated exceptions. Limited infilling in a village is an exception

¹ Tonbridge and Malling Borough Council Local Development Framework Core Strategy 2007

- listed in Paragraph 149(e) of the Framework. To meet this exception the proposal must be 'limited', amount to 'infilling' and be 'in a village'.
5. The appeal scheme is for a single dwelling and therefore could reasonably be considered limited in scale. However, as things currently stand the appeal site's southern boundary adjoins open scrub and woodland. Accordingly, it is not located between buildings and therefore the proposal would not amount to infilling.
 6. However, planning permission² exists for a large 'care village' to the south of the appeal site. Some preliminary works appear to have taken place and I understand that reserved matters and other conditions have been approved. The indications are that the care village is very likely to be developed and this would include buildings close to the boundary with the appeal site. Were the care village to be developed in this way then the proposal could be regarded on the ground as limited infilling.
 7. There is no definition within local or national policy as to what constitutes a village. The population of the settlement is therefore a useful starting point. In this respect, West Malling has a smaller population than many of the settlements in Kent which were recognised as villages in the 2011 Census. However, population is only one indicator of whether a settlement is a village or not. The matter needs to be considered in the round having regard to the function and character of the settlement.
 8. West Malling encompasses a wide range of services and facilities, many of which are positioned along a central High Street. In this respect, the settlement appears to act as a focus point for a wider hinterland. In this sense it functions as a small market town and this is how the settlement has been listed in Census data and regarded for centuries. This function is acknowledged in Policy CP12 of the Core Strategy, which identifies West Malling as a Rural Service Centre and one of the larger settlements in the Borough. The evidence before me does not demonstrate this situation has changed. That said, Hildenborough, Borough Green, Hadlow and East Peckham are Rural Service Centres and categorised as villages in the Census. This would seem to suggest that the level of services alone is not determinative in distinguishing a village from a town.
 9. Nevertheless, the settlement has the form and character of a small town due to a densely developed bustling centre with little connection with the surrounding countryside. This tapers off into suburban housing estates. As a result, West Malling has the character of a small town. Added to this is its function as a small market town and the population, whilst not large, is not small either. Accordingly, when considered in the round, West Malling is a town and therefore the proposal would not be located in a village.
 10. The appellant submits that it is necessary to consider the spirit of Paragraph 149(e), which he suggests seeks to permit infilling in built up areas. He points to an appeal decision³ where an Inspector took this view. The submissions and evidence that led that Inspector to reach the view they did is not before me.
 11. In this instance the Council has made the point, correctly in my view, that if the Government wanted to include infilling in towns as an exception then it would have done so. As the Council suggest, the omission of towns could have

² TM/17/00506/OA

³ APP/P0240/W/18/3196341

been intentional to limit the circumstances where the exception in Paragraph 149(e) could apply. Thus, it would be prudent to read the wording of Paragraph 149(e) on face value. That being that it is an exception that only relates to proposals that would be limited infilling in villages. It would be too great a leap to read the term 'village' as encompassing towns or hamlets.

12. Accordingly, I find that the proposal would be limited and although not infilling at present, would become so on account of the care village's presence. However, the site is not within a village. For this latter reason, the exception in Paragraph 149(e) does not apply.
13. Paragraph 149(g) of the Framework sets out an exception that relates to the development of previously developed land (PDL). It allows the limited infilling or redevelopment of such sites provided there is no greater impact on the openness of the Green Belt than the existing development.
14. I have already found that as things stand the proposal would not amount to infilling, but this situation is likely to change with the care village development. That said, the appeal scheme would involve a new building being constructed on a verdant side garden currently in use as a lawn. For reasons I go into, this would result in a greater impact on the openness of the Green Belt regardless of whether the proposal amounts to infilling or not.
15. Moreover, I share the view of the previous Inspector that the appeal site is garden land within the built-up area of West Malling and therefore is not PDL when applying the definition in the Framework. Thus, the proposal would not meet the exception in Paragraph 149(g) of the Framework.
16. In conclusion, the appeal scheme would not meet the exceptions in Paragraph 149 (e) and (g) of the Framework and a case has not been advanced that it would fall under any of the other exceptions. Neither Paragraph 149(e) nor (g) require me to examine whether the proposal would undermine the purposes of including land in the Green Belt. The proposal would therefore be inappropriate development in the Green Belt which would, by definition, harm the Green Belt.

The effect on the openness of the Green Belt

17. The proposal would result in a reasonably large dwelling being constructed on what is currently a verdant and open parcel of land that adjoins woodland and scrub. This would erode the openness of the Green Belt as development would occur where there is none currently. Moreover, the existing loose knit grain of development on the edge of the town would be intensified and expanded. This would result in the perception that development was encroaching into the countryside. As a result, the openness of the Green Belt would be harmed.
18. However, and as already explained, the care village development is likely to occur, and this would wrap around two sides of the appeal site. Thus, with the care village *in situ* the appeal site would no longer adjoin verdant open countryside to the south. Thus, the urbanising effect of the care village would greatly diminish the sense that the appeal scheme was encroaching beyond existing development and thus eroding the openness of the Green Belt and undermining its purposes.
19. Nevertheless, the presence of the care village would not extinguish the harmful effect on the openness and purposes of the Green Belt altogether. This is because the proposed dwelling would have an appreciable scale and mass. Its

presence would erode the verdant and spacious appearance of a plot that exhibits an open character and has some limited affinity with the countryside to the west. An additional dwelling would encroach into this open area, intensify the level of development, reduce the existing plot size, and decrease the space between buildings. This would adversely affect the transition from settlement to countryside and thus very modestly harm the openness of the Green Belt.

20. The previous Inspector in the now quashed decision stated that in his view the presence of the care village would result in the appeal scheme having no material impact on the openness of the Green Belt. However, that conclusion was inconsistent with an earlier finding within the same decision that the proposal would have a greater impact on the openness of the Green Belt. For the reasons already given, I share the latter view.
21. Thus, the proposal would result in some very modest harm to the openness of the Green Belt if the care village is constructed, as is likely. The Framework advises that openness is an essential characteristic of the Green Belt, the fundamental aim of which is to keep land permanently open. The harmful loss of openness caused by the appeal scheme would be at odds with this aim.

Other Considerations

22. Building the appeal scheme would result in some modest economic benefits to the construction industry and subsequently from the spend of future occupants. This small sized development could be delivered quickly in a location accessible to the town centre and where the impact on the openness of the Green Belt would be very modest due to the proximity of an approved care village. The latter point is relevant in this instance because the Council are currently unable to demonstrate a five-year housing land supply and will therefore need to deliver more housing. However, I have seen nothing to suggest the Council will likely need to rely on windfall Green Belt sites to address the shortfall. The shortfall is acute, with the Council only being able to demonstrate a supply of 2.93 years. That said, a single dwelling would make only a small contribution to remedying the housing supply deficit. Overall, the scheme's benefits are collectively a matter of moderate weight in favour of the proposal.

Whether there would be Very Special Circumstances

23. The Framework, and by extension Policy CP3 of the Core Strategy, state 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.
24. The appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. It would also very modestly harm the openness of the Green Belt. Paragraph 144 of the Framework requires substantial weight to be given to any harm to the Green Belt. On the other hand, the other considerations I have identified carry only moderate weight in favour of the proposal. As such, the harm to the Green Belt would not be clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development do not exist.

Other Matters and Overall Conclusion

25. In the absence of a five-year housing land supply Paragraph 11(d) of the Framework is relevant. It states that planning permission should be granted unless the application of policies in the Framework that protect areas of particular importance, such as the Green Belt, provide a clear reason to refuse the proposal. For the reasons given, the Green Belt policies in the Framework provide a clear reason to refuse the proposal. As a result, the 'tilted balance' in Paragraph 11(d)ii of the Framework is not relevant.
26. In conclusion, the proposal would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has failed.

Graham Chamberlain
INSPECTOR