



Appeal Decision

Site visit made on 2 November 2021

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24/11/2021

Appeal Ref: APP/H2265/W/21/3273503

Appledene Farm, Norman Road, West Malling ME19 6RW

- 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 Sidertech Developments Ltd against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/20/02361/FL, dated 14 October 2020, was refused by notice dated 7 December 2020.
 - The development proposed is two detached self-build dwellings with associated amenity space and creation of a new vehicular access.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The appellant has submitted a unilateral undertaking (UU) which states that development would be carried out subject to a self-build arrangement. I comment further on this matter below.
3. The Council drew my attention to an appeal decision relating to No 237 London Road, West Malling¹. This decision, dated 9 November 2021, was made after the normal final date for comments on this appeal. It was material to this case in that it considered the question of whether West Malling should be regarded as a village for the purposes of Green Belt policy. Accordingly, the appellant was given an opportunity to comment on the London Road appeal decision.

Main issues

4. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - The effect of the proposal on the openness of the Green Belt and the purposes of including land within it.
 - The effect of the proposal on the character and appearance of the area.
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to

¹ APP/H2265/W/20/3253437

amount to the very special circumstances required to justify the proposal.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

5. Policy CP3 of the Tonbridge and Malling Core Strategy (CS) defines the extent of the Green Belt within the Council's area and states that national Green Belt policy will be applied. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to say that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 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.
6. The construction of new buildings in the Green Belt should be regarded as inappropriate, subject to some exceptions that are set out in the Framework. The appellant relies on paragraph 149(e) which allows for limited infilling in villages. The term "villages" is not defined in the Framework. However, West Malling is a relatively large settlement, with a High Street and central area that contains a wide range of shops and services. The Inspector who considered an appeal at No 237 London Road, West Malling commented that the settlement has the form and character of a small town. He found that it has a densely developed, bustling centre with little connection with the surrounding countryside. He concluded that:

"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."

I agree with these conclusions, which are consistent with what I saw on my site visit.

7. The appellant contends that West Malling has a smaller population than other settlements that are regarded as villages. It is also argued that West Malling has a Village Hall and that there is no secondary school in the settlement. These are all matters that I take into account. To my mind there is no single determining factor and it is necessary to look at the matter in the round.
8. Reference is made to appeal decisions at Coppull, Lancashire, where the Inspector found that the settlement could be described as a village², and at Westerham, Kent³, where the settlement is also referred to as a village. Those appeals turned on facts that were specific to the settlements in question. Moreover, there is no evidence that the decision in Westerham had to deal with the status of the settlement, which does not seem to have been a controversial matter. In an appeal decision relating to The Plot, Norman Road, West Malling⁴, the Inspector refers to the "village centre". However, as in the Westerham decision, there does not appear to have been any argument or evidence on the status of the settlement. Whilst I take these appeal decisions into account, they

² APP/D2320/W/16/3154595

³ APP/G2245/W/16/3142246

⁴ APP/H2265/W/17/3177664

do not alter my findings on the evidence before me. Drawing all this together, for the purposes of this appeal, I consider that West Malling is a town. It follows that this proposal could not be located in a village.

9. In any event, the appeal site is not within West Malling. The Green Belt boundary runs along Norman Road. The southern side of the road is within the settlement and the northern side, including the appeal site, is in the Green Belt. I appreciate that policy boundaries may not be determinative when deciding whether a site is within a settlement for the purposes of the Framework. However, in this case, the policy boundary is strongly aligned with the position on the ground. The southern side of Norman Road has a continuously developed frontage leading out from the settlement to a point some 50m or so to the west of the appeal site.
10. By contrast, on the northern side of Norman Road there is single detached house, set in an extensive plot, a former agricultural building now used for retail purposes and a bungalow (No 164 Norman Road) which is set well back from the road in a large plot. Elsewhere along this part of Norman Road there are former orchards and fields (including the appeal site) which form part of the wider rural setting of the settlement. Rather than infilling within a settlement, the appeal proposal would represent an addition to fragmented development in the countryside.
11. I conclude that the proposal would not represent infilling in a village. Rather, it would amount to inappropriate development in the Green Belt.

The effect of the proposal on the openness of the Green Belt and the purposes of including land within it

12. The appeal site comprises a field, bounded to the south by Norman Road. On one side is the bungalow at No 164 and on the other the retail unit referred to above. There is further open land to the north. There is a former agricultural building which occupies a small part of the site. In its current condition, the land has a high degree of openness. The proposal would see the introduction of two large, detached houses which would occupy approximately two thirds of the width of the site. The houses would be set back from the road, there would be a gap between them and they would have good sized back gardens. Consequently, only around 15% of the site would be covered with buildings. Even so, the character of the site would be very much more built up than it is now. I consider that this would result in harm to the openness of the Green Belt.
13. The Framework sets out the five purposes of Green Belt. I consider that the purpose of assisting in safeguarding the countryside from encroachment is the most relevant to this appeal. The appeal site connects to further countryside to the north and is experienced as one of the open areas that abut Norman Road, creating the potential for views over the countryside from the urban area. The interior of the site is not very visible from Norman Road because the boundary hedge has grown tall. However, depending on the seasons, the hedge will allow some filtered views. In any event, the hedge itself is a rural feature. The appeal proposal would have the effect of eroding the rural character of the northern side of the road by adding to the fragmented development that is already there. That would be harmful to the purpose of safeguarding the countryside from encroachment.

The effect of the proposal on the character and appearance of the area

14. There is a clear contrast between the developed frontage to the south of Norman Road and the rural character to the north. This contrast is a defining feature of Norman Road. Currently, the site makes a positive contribution to the character and appearance of the area, due to the attractive frontage hedge and the glimpsed views of open land beyond.
15. The proposed design has some positive features, including the creation of a framed view through the centre of the site. Viewed in isolation, the design of the houses would be distinctive, with each house comprising three rectangular volumes, set at a slight angle, with accommodation wings on either side of a central core. However, the National Design Guide makes clear that responding to context is an important element of good design. To my mind, the proposal would not be well related to its context. The overall scale of the architectural composition formed by the two houses, together with the emphasis on strong geometric forms, would sit uncomfortably with the finer grained development to the south of Norman Road. These features of the design would also be in stark contrast with the more informal, rural character of the northern side.
16. The proposed car ports would be contained within grass banks, sloping up from the level of Norman Road. The Design and Access Statement (DAS) suggests that this would screen the parking and create the illusion of single storey buildings on the appeal site. I note that the parking would be screened. Moreover, there may be some fixed points from which the illusion referred to in the DAS could be experienced. However, in reality, the development would be seen from various angles by people moving along Norman Road. The full scale of the proposals would be readily apparent in oblique views from Norman Road and from the site access. Moreover, I consider that the grass banks enclosing the car ports would themselves be obviously artificial structures that would look out of place in this predominantly flat or gently sloping landscape.
17. The Landscape and Visual Impact Assessment (LVIA) concluded that, allowing for landscape mitigation, the visual impacts on nearby viewpoints would be on the cusp of significant/not significant. However, there is limited scope for planting along the side boundaries. I consider that new planting would have only a limited effect in terms of mitigating the impacts described above. In my view the LVIA understates the degree of visual impact.
18. I conclude that the proposal would not represent good design, as that term is used in the Framework. It would result in harm to the character and appearance of the area and would conflict with CS Policy CP24, which states that all development should be well designed and should respect the site and its surroundings. It would also conflict with Policy SQ1 of the *Managing Development and the Environment* Development Plan Document (MD&E) which seeks to conserve the character and local distinctiveness of the area.

The effect on the settings of listed buildings

19. The Heritage Statement did not identify any harm to the West Malling Conservation Area or to the heritage assets within it. I agree with that conclusion. The Heritage Statement identified that there would be some harm to the group of Grade II listed buildings at Norman Place. This was assessed to be at the lower end of "*less than substantial harm*", as that term is used in the Framework. Norman Place is a row of cottages which, the listing description

notes, date from 1811. They have both historic and architectural interest as well-preserved examples of 19th century housing built from good quality local materials. There would be no harm to the fabric of the cottages, which are sited to the south of Norman Road, opposite the proposed site entrance.

20. When Norman Place was built it was in a relatively isolated, rural location, with open land around it on both sides of the road. Since then, the southern side has been developed, such that the cottages now form part of a more or less continuously built frontage. However, the northern side remains predominantly rural in character, notwithstanding the sporadic development described above. Moreover, the road is relatively narrow and the hedge fronting the appeal site is an important feature in the street scene. The hedge helps to maintain the sense of the cottages being located along a lane that retains a significant element of its rural character. In my view that setting makes a positive contribution to the significance of the listed buildings.
21. The proposal would result in the loss of the central section of the hedge, which would be replaced by an engineered bellmouth access and views of the artificial grass banks and new houses, as described above. As noted above, a longer view would also be opened up at this point. However, in terms of the setting of the listed buildings, any benefit from that view would be outweighed by the impact of the proposed development. The proposal would result in a significant erosion of the rural character of the setting of the listed buildings, in a way which would be harmful to their significance. I consider that the level of harm would be greater than that identified in the Heritage Statement. The proposal would conflict with MD&E Policy SQ1, insofar as that policy seeks to protect the historical and architectural interest of the area.
22. In the terms of the Framework, the harm would be "*less than substantial harm*". However, it does not follow that such harm is minor or unimportant. The Framework states that great weight should be attached to the conservation of a designated heritage asset. The Framework requires the harm to be balanced against the public benefits of the proposal. I shall return to that balance below.

Other considerations

23. The Council accepts that it cannot currently demonstrate the five year supply of housing sites required by the Framework. The approach to decision-making set out in paragraph 11 of the Framework is therefore engaged. The proposal would result in a net gain of two dwellings. Given the small contribution to housing land supply that this would represent, I attach only moderate weight to that benefit.
24. The application form describes the proposal as being for two self-build dwellings. However, Planning Practice Guidance (PPG) states that, in considering whether a home is a self-build or custom build home, relevant authorities must be satisfied that the initial owner of the home will have primary input into its final design and layout. The PPG goes on to say that homes purchased at the plan stage prior to construction, without input into the design and layout from the buyer, are not considered to meet the definition of self-build and custom housing.⁵

⁵ Reference ID: 57-016-20210208

25. This is a full application, which would settle the detailed design and layout of both units. Moreover, the terms of the UU would only require that “a *self-build arrangement*” is in place before construction starts. There would be no restriction on the occupancy of the units. Consequently, it is not clear how the requirement set out in PPG would be achieved. It is submitted that one of the houses would be occupied by the appellant, who has had an input into the design. I have no reason to doubt that this is the appellant’s intention. However, planning permission runs with the land and circumstances can change. There is nothing in the UU that would secure this outcome. For these reasons, I do not consider that the UU would secure the delivery of self-build housing, in the terms of PPG. Accordingly I attach only limited weight to this factor.
26. The Council’s third reason for refusal concerned overlooking of the adjacent bungalow at No 164 from a proposed balcony. However, I consider that harmful overlooking could be avoided by the use of a privacy screen. This could be secured by a condition. Consequently, this is not a matter that weighs against the appeal.
27. The appellant states that the proposal would take a sustainable design approach, including a high degree of energy efficiency resulting in a low carbon footprint. I have taken account of this aspect of the design.

Whether very special circumstances exist

28. The proposal would be inappropriate development in the Green Belt which is, by definition, harmful. It would also cause harm to the openness of the Green Belt and to the purposes of including land within it. Mindful of the Framework, I attach substantial weight to the Green Belt harm. In addition, there would be harm to the character and appearance of the area and harm to the setting and significance of the listed buildings at Norman Place. Whilst I attach moderate weight to the net gain of two houses, taking account of the proposed measures to achieve a low carbon footprint, this benefit is not sufficient to clearly outweigh the harm to the Green Belt and the other harms that I have identified. It follows that very special circumstances do not exist. The proposal would be contrary to national policy on Green Belts and to CS Policy CP3.

Conclusions

29. The proposal would fail to preserve the setting of the listed buildings at Norman Place. The public benefits of the proposal, namely the net gain of two houses, would not be sufficient to outweigh that harm. The proposal would therefore be contrary to the policies of the Framework relating to designated heritage assets. The proposal would also be contrary to the policies of the Framework relating to Green Belt. These matters provide clear reasons for refusing the development proposed. Accordingly, notwithstanding the housing land supply position, the Framework is not a matter that weighs in favour of the appeal.
30. For the reasons given above, the proposal would be contrary to the development plan and the appeal should be dismissed.

D Prentis

Inspector