
Appeal Decision

Site Visit made on 9 November 2021

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2022

Appeal Ref: APP/G2245/W/21/3271885

Land South of 10 To 12C High Street, Seal TN15 0ED

- 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 J.R Brady against the decision of Sevenoaks District Council.
 - The application Ref 20/03726/FUL, dated 17 December 2020, was refused by notice dated 22 February 2021.
 - The development proposed is Erection of a detached three bedroom dwelling with associated parking, amenity and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address from the Council's decision notice. This more accurately reflects the site location and has been agreed with the appellant.
3. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). Both parties have been provided with an opportunity to make further representations in relation to this matter. As such, I have had regard to the revised Framework in considering this appeal.
4. An interested party has asserted that bats are present on the appeal site. A Preliminary Ecological Appraisal¹ (PEA) was submitted to the Council as part of the planning application. Paragraph 6.4.3 of the PEA states that three trees (T17, T18 and T19) would be removed to facilitate the proposed development and that these trees have the potential to support roosting bats. However, given that the trees were covered in ivy at the time of the survey, the PEA recommends further survey work in order to establish whether they contain Potential Roost Features (PRFs). Given that this additional survey is not before me, this is a main issue in the consideration of this appeal, despite not having been one of the Council's reasons for refusal. The parties have both made further representations in relation to this matter, which I have taken into account.

Main Issues

5. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and the development plan policies.

¹ Preliminary Ecological Appraisal, Greenspace Ecological Solutions (October 2020)

- The effect of the proposed development on protected species (bats).
- Whether the proposed development would conserve and enhance the natural beauty of the Kent Downs Area of Outstanding Natural Beauty (the AONB).
- If the proposed development is inappropriate development, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposed development.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

6. The appeal site is in the Green Belt, as identified on the Council's Local Plan (2015) Policies Map. Core Strategy² (2011) Policy LO8 states in part that 'the extent of the Green Belt will be maintained'.
7. Framework Paragraph 149 states that, the construction of new buildings in the green belt should be regarded as inappropriate development except in certain circumstances. The appellant alleges that the proposed development fulfils exception 'e' of Framework Paragraph 149, which refers to 'limited infilling in villages'.
8. It is therefore necessary to consider whether the site is within a village for the purposes of applying exception 'e'. As a starting point, the Local Plan³ (2015) policies map does not include distinct settlement boundaries. Nonetheless, in contrast to the appeal site, the village of Seal is shown on the policies map as being wholly outside of the Green Belt. Paragraph 3.5 of the SPD (2015)⁴ states that the green belt boundary usually marks the edge of the settlement. However, paragraph 3.6 of the SPD provides further clarification, stating that where the change in character between the settlement and the Green Belt is not apparent *'there may be circumstances where infill development is appropriate within the green belt'*.
9. Indeed, the judgement in *Julian Wood v SSCLG and Gravesham Borough Council* [2015] held that the boundary of a village defined in a local plan may not be determinative for the purpose of considering whether a site is within a village. It is necessary to consider the situation 'on the ground'.
10. The appeal site comprises an area of grassland which is partly enclosed by a brick wall. To the north there is a linear row of buildings fronting the High St. To the east there is an existing parking area, beyond which there are a range of buildings that are predominantly in employment use. To the west is Seal Laundry, which is a large building comprising residential units. To the south, there is a hard-surfaced parking area. As such, the site is surrounded by development on all sides and is largely enclosed by a brick wall. Within this context, the appeal site visually reads as part of the existing settlement when viewed from the surrounding area. The site is also functionally contiguous with the existing settlement, as it is within a very short walk from the services and facilities on the High Street.

² Sevenoaks District Council Local Development Framework Core Strategy (2011)

³ Sevenoaks District Council Local Plan – Allocations and Development Management Plan (2015)

⁴ Supplementary Planning Document: Development in the Green Belt (February 2015)

11. It is evident, from an assessment of the characteristics of the site and surrounding area, that the site is located within the village of Seal. It is therefore necessary to consider whether the proposed development is 'limited infilling'.
12. Only one dwelling is proposed and the scale is comparable to the majority of the residential properties in the surrounding area. Therefore, it would be 'limited' within the terms of exception (e). The Framework does not define 'infilling'. However, paragraph 3.3 of the SPD (2015) defines limited infilling as *'the completion of an otherwise substantially built-up frontage by the filling of a narrow gap normally capable of taking one or two dwellings only.'* The SPD also asserts that the built-up frontage should be visible within the street scene.
13. However, the SPD definition of 'limited infilling' is not replicated in the development plan or in the Framework. It may be the case that limited infilling, accorded its ordinary meaning, would be achieved in instances where development would logically complete or replicate a prevailing pattern of development (even where there is no substantially built-up frontage or narrow gap). The Framework is silent on that point. A judgement in that respect can, in my view, only be reached with reference to a specific proposal and to its surrounding context on a case-by-case basis. As such, I accord the SPD only limited weight in this regard.
14. The appeal site is surrounded by buildings and car parks on all sides. Seal Laundry and the nearby employment buildings both extend further towards the countryside than the appeal site. As such, the appeal site comprises a gap between the surrounding development. As such, the proposed development would infill an existing gap within the village and therefore as a matter of judgement would comprise 'limited infilling' within the terms of exception (e).
15. In summary, in accordance with Framework Paragraph 149(e), the proposed development would be limited infilling in a village and as such, it would not be inappropriate development in the Green Belt. As a result, it would not have an adverse impact on the openness of the Green Belt.
16. The proposed development would therefore accord with Core Strategy (2011) Policy LO8, which seeks in part to maintain the extent of the Green Belt. Core Strategy (2011) Policy LO7 is not relevant to this main issue as it does not refer to the Green Belt.
17. The proposal would conflict with the SPD (2015) insofar as it would not fit within the tightly defined definition of 'limited infilling'. However, I accord greater weight to the Framework in this regard, which does not restrict the consideration of 'limited infilling' to a narrow gap in a built-up frontage. Indeed, the particular circumstances of this case are unlikely to be present in many, if any, other locations.
18. As the development would not be inappropriate development in the Green Belt, and hence there would be no harm caused to it, it is not necessary for me to consider whether very special circumstances exist.

The effect of the proposed development on protected species

19. As addressed in the preliminary section of this decision, there is insufficient evidence before me to determine whether the trees within the site, some of which (T17, T18 and T19) would be removed, provide PRFs for bats. This is

because the appellant's PEA (2020) has concluded that a further survey of the trees is required in order to reach a conclusion on this matter. Whilst the appellant has indicated that this survey has now been undertaken, I must consider the appeal on the evidence before me. To allow submission of additional survey work could prejudice interested parties who would not have had the opportunity to comment on it.

20. Circular 06/2005 advises that, where there is a reasonable likelihood of protected species being present, it is essential that the presence of protected species, and the extent to which they would be affected by the development, is established prior to planning permission being granted. Whilst ecological surveys can be carried out under conditions attached to a planning permission, this should only be done in exceptional circumstances. There is no evidence before me to suggest that there are any such exceptional circumstances.
21. Therefore, in line with the precautionary approach set out in paragraph 99 of Circular 06/2005, without this evidence it is has not been demonstrated that the proposed development would not have an adverse impact on a protected species. As such, the proposed development would conflict with Local Plan (2015) Policy EN1, which states in part that proposals which affect a site's existing biodiversity should be designed such that they avoid or mitigate any potential harm. There would also be a conflict with the general objectives of conserving and enhancing the natural environment as set out in the Framework.

Effect on the AONB

22. The appeal site is located within the Kent Downs AONB. In determining this appeal, I have had regard to the duty under section 85(1) of the Countryside and Rights of Way Act 2000 (as amended) (the CRW Act). This requires that relevant authorities have regard to the purpose of conserving and enhancing the natural beauty of an AONB. Furthermore, Paragraph 176 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in an AONB.
23. Framework Paragraph 177 relates to 'major' development in the AONB. Given the small scale of the proposed development in relation to the surrounding development, I do not consider that it comprises 'major' development within the terms of Paragraph 177.
24. The proposed development would be located within the village of Seal. Whilst the site is currently vacant and has a relatively verdant character, it is surrounded by development. The proposed development would assimilate well with the existing settlement and would be viewed within the context of the built-up areas surrounding the appeal site. Indeed, my assessment is that the built-up area of the settlement gives way to the countryside beyond Wilderness Avenue, which is further south of the appeal site.
25. Furthermore, many of the existing mature trees which surround the site would be retained. Not only would this retain the verdant character of the site, but it would also assist, in combination with the existing surrounding buildings, in visually screening the site from surrounding areas.
26. For these reasons, the development would conserve the natural beauty of the AONB. In terms of enhancement, planting and soft landscaping proposals could

bolster the existing verdant character of the appeal site. These measures could be secured by condition. Notwithstanding this, criterion 'B' of Local Plan (2015) Policy EN5 outlines that development within an AONB should only secure enhancements 'where feasible'.

27. As such, the proposed development complies with Local Plan (2015) Policy EN5 and Core Strategy (2011) Policy LO8, which in part seek to conserve and enhance the natural beauty of the AONB. The development also accords with Framework Paragraph 177, which seeks in part to ensure that the scale and extent of development in an AONB is limited and sensitively located.

Other matters

28. The Council found that the proposal would preserve the character and appearance of the Seal Conservation Area and would not harm the setting of the surrounding listed buildings. Under section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am obliged to have special regard to the desirability of preserving the listed buildings, their setting and any features of special architectural or historic interest. In addition, under section 72 (1) of the same Act, I am obliged to pay special attention to the desirability of preserving or enhancing the character and appearance of the conservation area.
29. Given the sympathetic design, limited scale and appropriate siting of the proposal, and as there is no indication that the site has any particular value in attesting to the historic evolution of the area, I am satisfied that it would preserve the character and appearance of the conservation area and would not result in any harm to the setting of the surrounding listed buildings⁵.

Planning Balance

30. Both parties agree that the Council cannot demonstrate a five-year supply of deliverable sites for housing. The Council's published position⁶ is that a housing land supply (HLS) of 2.9 years can be demonstrated. The appellant accepts this position on the basis that it represents a 'best-case-scenario'.
31. Given the absence of a five-year housing land supply, Framework Paragraph 11d applies. Noting my conclusions on the effect of the proposed development on the Green Belt, AONB, and Heritage Assets, however, there are no relevant Framework policies which provide a 'clear reason for refusal' within the terms of Framework Paragraph 11d(i). Therefore, Framework Paragraph 11d(ii) is engaged and planning permission should be granted unless 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.
32. I have concluded that insufficient evidence has been provided to enable a proper assessment of the effect of the proposed development on bats. Therefore, it has not been demonstrated that the proposed development would not have an adverse impact on a protected species. The proposed development would therefore conflict with Framework Paragraph 180(a), which states that planning permission should be refused where significant harm to biodiversity

⁵ Grade II Listed Seal Laundry; Grade II Listed former stables and hayloft to the Kentish Yeoman Public House; Grade II Listed Building 14/15 High St and Grade II Listed Kentish Yeoman Public House

⁶ Five Year Housing Land Supply Statement September 2021

cannot be avoided. This is an adverse impact to which I afford substantial weight given the high level of legal protection afforded to protected species⁷.

33. I have not identified any other adverse impacts, including in relation to the effect of the development on the Green Belt, AONB or Heritage Assets.
34. In terms of the benefits, the proposed development would result in an increase of one dwelling to the housing stock. There would be social and economic benefits as a result. Even taking into account the HLS shortfall, I attribute these benefits only limited weight, given the small scale of the proposed development. This is consistent with the emphasis on significantly boosting the supply of housing at Framework Paragraph 60.
35. There would also be some limited social and economic benefits associated with the employment generated and/or supported through the construction period and the support for local services and facilities resulting from the increased population. However, these benefits only carry moderate weight given the small scale of the development.
36. The design of the proposed development would be in-keeping with the character of the local area. Indeed, the Council's Officer Report concludes that the development complies with the development plan policies on design. Framework Paragraph 134 states that in such instances, significant weight should be afforded to development.
37. The fact that the site is easily accessible to services and facilities carries neutral weight, given that all development of the type proposed should be located in accessible locations where possible.
38. There would also be moderate environmental benefits associated with enhancement of the character of the area which could be achieved through additional planting and soft landscaping. However, this benefit can only be afforded moderate weight given that several trees would also need to be removed.
39. In summary, there would be economic, environmental and social benefits associated with the proposed development, which together can be afforded moderate weight. However, these benefits would be significantly and demonstrably outweighed by the adverse impacts of the development, given that it cannot be ascertained whether there would be harm to bats, which are a protected species.

Conclusion

40. I have found that the proposed development would not be inappropriate development in the Green Belt and as such it would preserve its openness. In addition, the proposed development would conserve the natural beauty of the AONB and potentially enhance it through additional planting and landscaping.
41. However, those points do not outweigh the harm which could be caused to a protected species. Indeed, there is insufficient evidence before me to conclude that the proposed development would not result in adverse impacts on protected species. As such, the proposed development would conflict with the development plan taken as a whole. I have also taken into account Framework

⁷ The Conservation of Habitats and Species Regulations 2017 (as amended)

paragraph 11d(ii), which in this case weighs further against granting planning permission. I therefore conclude that the appeal should be dismissed.

Luke Simpson

INSPECTOR