



Appeal Decision

Site visit made on 17 January 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2022

Appeal Ref: APP/G2245/W/21/3275218

Land at 101 Scratchers Lane, Fawkham, Kent, DA3 8PH

- 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 Malcolm Stanley against the decision of Sevenoaks District Council.
 - The application Ref 20/03597/FUL, dated 4 December 2020, was refused by notice dated 21 April 2021.
 - The development proposed is erection of a 3-bedroom chalet bungalow on land to the western side of 101 Scratchers Lane within the existing residential garden.
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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 been published since the planning application was determined by the Council. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework in reaching my decision.

Main Issues

3. The main issues raised in respect of this appeal are: -
 - a) Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies and the effect of the proposal on the openness of the Green Belt; and
 - b) Whether harm by reasons of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would those amount to the very special circumstances required to justify the proposal?

Reasons

Green Belt and openness

4. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristic of Green Belts being their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

5. The Framework states that the local planning authority should regard construction of new buildings as inappropriate development in the Green Belt unless it is one of seven specific exceptions (paragraph 149) of the Framework. Two of the exceptions (149 e and g) are "*limited infilling in villages*" or "*limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would; not have a greater impact on the openness of the Green Belt than the existing development; ...*".
6. Policy LO1 of the Sevenoaks Core Strategy (the CS) focuses development to within the built confines of existing settlements. This policy also states that "*Development will only take place where it is compatible with policies for protecting the Green Belt*".
7. The location falls beyond any settlement boundary and, in terms of development plan policy would fall within the countryside. The dwelling would be sited between two existing dwellings and a day centre. Although the site is close to Brands Hatch race circuit and there are a cluster of industrial type buildings east/southeast of the site, the land in the wider area north, east and west of the site is open. There are no features characteristic of a village or settlement in the immediate area. To reach services and facilities there would be a need to travel to settlements. I, therefore, do not consider the proposal would represent infilling within a village.
8. The site is abutted on its boundaries by existing development. In this context the proposal represents limited infilling. Residential gardens which are not in 'built-up areas' are not excluded from the definition of previously development land in Annex 2 of the Framework. Having regard to Annex 2 of the Framework, the site would represent previously developed land.
9. The site being the side garden of 121 Scratchers Lane is mostly laid as lawn. It hosts some small-scale domestic garden related paraphernalia and vegetation within the site. A dwelling with associated curtilage would be a complete redevelopment of the site. A dwelling would have a greater impact on the openness of the Green Belt than the existing mostly undeveloped garden.
10. The proposal would reduce openness by virtue of creating built development in the Green Belt. This would have a greater impact on the openness of the Green Belt than the existing garden. As such, the proposed development would not comply with the exceptions of paragraph 149 of the Framework and would be inappropriate development in the Green Belt. Being outside a settlement and within the Green Belt the proposal would conflict with Policy LO1 of the CS. Policy LO8 of the CS supports the protection of the Green Belt. As the development would be inappropriate development in the Green Belt it would not comply with Policy LO8. I have been referred to and had regard to the Court of Appeal case of *Dartford Borough Council v SoS for Communities and Local Government & Ors* 2017 [EWCA Civ 141] in reaching my conclusions.

Other considerations

11. There is an extant lawful development certificate (LDC) for an outbuilding comprising a garage and games room. This is put forward as a fall-back position that could be built if the appealed proposal fails. The appellant has provided drawings of the L-shaped single storey building relating to the extant LCD and suggest that it would be of similar size and form as a bungalow. The

proposed dwelling that is before me would be greater in scale, bulk and mass than that of the single storey outbuilding. The appellant acknowledges that the bulk of the proposed dwelling would be greater than that of the LDC outbuilding. The proposed dwelling would, therefore, have a greater impact on the openness of the Green Belt than that of the LDC development.

12. Further to the above, the appellant indicates that he would give up the LDC permission if this proposal is granted. However, there is no legal mechanism before me that would indicate that the LDC would be revoked.
13. The extant LDC does not, therefore, overcome the harm that I have identified to the Green Belt or justify the proposed development. This holds little weight in favour of the proposal.
14. The proposal would retain existing vegetation around the site and as such the development would not be particularly visible from the wider area. The proposed dwelling would be of an acceptable design, appearance and positioning within the site and would not encroach into the wider countryside landscape. The development would not impact upon the living conditions of existing neighbouring occupiers and have acceptable living conditions for its future occupiers. Adequate parking would be provided. The proposal does not raise concerns with respect to highway safety or ecology. Whilst these are attributes of the scheme, they are matters that would be required to be acceptable in planning terms on their own individual merits. As such, they hold neutral weight in favour of the proposal.
15. The Council has a housing supply shortfall. If there is not a five-year supply of deliverable sites in place, the provisions of paragraph 11d) of the Framework should be applied. Paragraph 11d)i indicates that the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 that corresponds to paragraph 11d)i lists designated Green Belt amongst those that are of particular importance. Therefore, the Council's housing supply shortfall holds no weight in favour of the proposal.

Conclusion

16. The proposal would conflict with Policies LO1 and LO8 of the CS. The proposed development would result in harm to the openness of the Green Belt and would, by definition, be harmful to the Green Belt. I attach substantial weight to the harm to the Green Belt having regard to the policy in the Framework. The benefits of the other consideration that at best hold little weight do not clearly outweigh this harm. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt.
17. Having regard to all matters raised, the appeal should be dismissed.

Nicola Davies

INSPECTOR