



Appeal Decision

Site visit made on 8 February 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2022

Appeal Ref: APP/H2265/W/21/3274978

**Boroughs Oak Cottage, 231 Hale Street, East Peckham, Tonbridge, Kent
TN12 5HY**

- 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 Ms Pam Mulholland against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/20/02120/FL, dated 23 September 2020, was refused by notice dated 18 November 2020.
 - The development proposed is 'Demolition of existing ancillary residential buildings and erection of single 1.5 storey dwelling and ancillary building (garage); associated hard and soft landscaping'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised Flood Risk Assessment (FRA)¹ was submitted as part of the appellant's appeal submissions. The Council commented on this document within their appeal submissions and the Environment Agency (EA) provided a consultation response on the revised document. I am therefore satisfied that my consideration of the revised FRA as part of the appeal would not prejudice any parties.

Main Issues

3. The main issues are: i) whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies; ii) the effect of the proposal on the openness of the Green Belt; iii) whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding; and iv) if the proposal would constitute inappropriate development, 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 allow the appeal.

Reasons

Whether Inappropriate Development

4. Paragraph 147 of the National Planning Policy Framework (2021) (the Framework) sets out that inappropriate development is, by definition, harmful

¹ Revision [0] dated 15 March 2021 by RSPD

to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework advises that other than in the case of specific exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt. Policy CP3 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy (2007) (CS) reflects the Framework in these regards.

5. The appeal site comprises part of the garden area of a semi-detached house located within the Metropolitan Green Belt. It is currently occupied by a collection of domestic outbuildings. It is proposed to demolish those outbuildings and erect a detached dwelling and garage. As the proposal would involve the erection of new buildings it would constitute inappropriate development in the Green Belt unless any of the specific exceptions identified within the Framework apply.
6. One such exception is limited infilling in villages. I saw the location of the appeal site to be outside what I would consider to be the boundary of the village of East Peckham, which is located some considerable distance to the south. It is also located a sufficient distance from a separate cluster of houses centred around Hale Street, south of the appeal site, to not fall within what may be claimed to represent a village boundary formed by those houses. The proposal could not therefore reasonably be described as limited infilling in a village.
7. Another exception at Paragraph 149(g) of the Framework is the complete redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development. As a residential garden outside of a built-up area the appeal site would comprise previously developed land as defined in the glossary at Appendix 2 of the Framework. If the proposal would have a greater impact on the openness of the Green Belt than the existing buildings within the appeal site then it would be inappropriate development contrary to Policy CP3 and the Framework.

Openness

8. Openness is an essential characteristic of Green Belts which has spatial and visual aspects. The appeal site is clearly visible in views from the northern end of Hale Street and along the remaining eastern extent of Seven Mile Lane, where it is seen amongst other two storey houses and their domestic outbuildings, and adjacent to a large garden centre comprising extensive car parking areas and single storey buildings. I am unconvinced by claims that the openness of the Green Belt is not appreciated in views from the east of the appeal site on account of the presence of development from 221 Hale Street to the garden centre, or that openness does not exist at the appeal site due to the presence of existing built form.
9. The existing buildings within the appeal site are large single storey domestic outbuildings with flat roofs, partially hidden behind boundary planting. The proposed detached garage would be capable of accommodating four cars, and although it would be single storey in height it would be a substantial building in its own right. The proposed dwelling has been described as a one-and-a-half storey chalet style building which would be smaller in scale than adjacent dwellings, but it would be much larger than the existing buildings within the appeal site.

10. The proposed buildings would have larger footprints and would be of much greater mass than the existing buildings they would replace. The proposed development would be seen amongst other buildings and alongside the garden centre and its car park, but the overall scale and built form of the proposal would have the effect of further consolidating development on the junction of Hale Street and Seven Mile Lane. The proposal would therefore have a materially greater impact on the openness of the Green Belt than the existing buildings visually and spatially.
11. The level of harm caused to the openness of the Green Belt by the proposal would be low due to the presence of the existing buildings within the appeal site and surrounding development. However, the level of harm would remain greater than that caused by those existing buildings. The openness of the Green Belt is one of its essential characteristics, along with its permanence, and the proposal would therefore comprise inappropriate development, contrary to Framework and Policy CP3 of the CS.
12. The five purposes the Green Belt serves are not determinative as to whether development is inappropriate or harms openness. In any case, the proposal would represent further encroachment of development within the countryside on account of it reinforcing the combined built form of housing along the northern end of Hale Street and adjacent to the garden centre. The proposal would not therefore align with the purposes the Green Belt serves.

Flooding

13. The revised FRA confirms the appeal site is located within Flood Zone 3b, which is functional floodplain and has a high probability of flooding, but I note the appellant's claims that the risk of flooding at the appeal site is lower than the Flood Zone 3b classification indicates. The proposed dwelling would be classed as 'more vulnerable' development in Annex 3 of the Framework. No information is before me to suggest a Sequential Test has been carried out, and the EA has objected to the proposal on the basis that the revised FRA fails to demonstrate the proposal would pass the Exception Test.
14. Paragraph 162 of the Framework and the Planning Practice Guidance² (PPG) advise that the aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding, which is Flood Zone 1, and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas at lower risk of flooding. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered.
15. It appears reasonably likely to me that an alternative site could be provided for the provision of a single dwelling elsewhere locally, within Flood Zone 1 or 2, and the Flood Risk Vulnerability Classification Table referred to by the PPG³ shows the type of development proposed should not be permitted in Flood Zone 3b. The proposal would therefore fail the Sequential Test, but even if I were to undertake an Exception Test, it is clear the appellant's submissions do not address Paragraph 164 of the Framework in demonstrating that the proposed development would provide wider sustainability benefits to the community that outweigh the flood risk, and not increase flood risk elsewhere.

² Paragraph: 019 Reference ID: 7-019-20140306

³ Table 3, Paragraph: 021 Reference ID: 7-021-20140306

16. It is claimed flood data from the EA and the Council's Strategic Flood Risk Assessment suggest the risk of flooding in this location would be lower than that implied by the Flood Zone 3b classification. It is also claimed that the appeal site's levels and the design of the proposal, including finished floor levels, would ensure the proposed development could be safe for its lifetime. In this regard, the appellant's submissions refer to a topographic levels survey being carried out, but this has not been presented to confirm the claim that ground levels in the position of the proposed dwelling are above the EA's modelled flood levels. The EA's modelling does not account for Boroughs Oak Stream in any case.
17. I accept that the finished ground floor level of the proposed dwelling could be raised in height above modelled flood levels, in addition to the other flood risk management measures mentioned in the revised FRA, but this would be insufficient to ensure the proposal complies with the guidance set out in the Framework. The proposal would therefore fail to accord with the Framework and Policy CP10 of the CS, which seek to direct development away from the floodplain to areas at no or low risk of flooding, amongst other things.

Other Considerations

18. The Council cannot demonstrate a five year housing land supply. Where this is the case, Paragraph 11(d)i of the Framework advises planning permission for new housing should be granted unless the application of policies in the Framework that protect Green Belts and areas at risk of flooding, amongst others, provide a clear reason for refusing development.
19. Very special circumstances would need to exist to justify granting planning permission for the proposal because it would constitute inappropriate development in the Green Belt, harm the openness of the Green Belt, and create unacceptable flooding risks. Paragraph 148 of the Framework advises that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless that harm, and any other harm, are clearly outweighed by other considerations. Paragraph 159 advises inappropriate development in areas at risk of flooding should be avoided.
20. It is claimed that the proposal would be an 'affordable build' in a sustainable location because the appellant intends to carry out the development for their own occupation and would not incur any land purchase costs. The appeal site is located within walking distance of some local services but remains too far away from most facilities and services to reasonably be considered within walking distance of them. The private benefits amounting from the reduced build costs to the appellant and the appeal site's location within walking distance of some local services do not amount to the very special circumstances which would be necessary to outweigh the substantial weight given to the harm that would be caused by the proposal to the Green Belt in addition to its unacceptable flooding risks. The policies of the Framework therefore provide clear reasons for refusing to grant planning permission for the proposal.

Other Matters

21. I have been referred to the Council's decision to grant planning permission⁴ for the erection of a dwelling at a nearby site, which was also located within the

⁴ The Council's reference TM/18/01742/FL

Green Belt and Flood Zone 3b. From the information provided it appears that different circumstances applied to that site which influenced the reasoning of the Council and the EA to reach different conclusions to those I have reached in respect of this appeal. The reasoning of the Council and the EA in that case does not lead me to any different conclusions on the main issues in this appeal or suggest that planning permission should be granted for the proposed development.

Conclusion

22. For the reasons set out above, the harm the proposal would cause to the Green Belt and its unacceptable flooding risks would not be outweighed by any other considerations and the very special circumstances required to justify the proposal have not been demonstrated. The appeal is therefore dismissed.

L Douglas

INSPECTOR