

Appeal Decision

Site visit made on 21 June 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2022

Appeal Ref: APP/H2265/D/22/3295868

Myrtle Cottage, London Road, Ryarsh, West Malling ME19 5AS

- 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 & Mrs D Keane against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/21/02503/FL, dated 13 September 2021, was refused by notice dated 28 February 2022.
 - The development proposed is erection of front boundary wall, piers and electric sliding gate.
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Decision

1. The appeal is dismissed.

Main Issues

2. 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 National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - b) The effect of the proposal on the openness of the Green Belt;
 - c) Highway safety; and
 - d) Whether harm by reason of inappropriateness would be clearly outweighed by other considerations. If so, would those amount to the very special circumstances required to justify the proposal?

Reasons

Inappropriate development

3. 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.
4. Policy CP3 of the Tonbridge and Malling Borough Core Strategy 2007 (the Core Strategy) states that proposals within the Green Belt would be subject to National Green Belt policy.
5. Paragraph 149 of the Framework sets out those forms of development that would not be inappropriate development in the Green Belt. The proposed

boundary wall does not fall within the categories of new buildings allowed for in the Framework permissible in the Green Belt under paragraph 149.

6. In not complying with the exceptions, the proposal would be inappropriate development in the Green Belt, which paragraph 147 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I also find that the proposal does not comply with Policy CP3 of the Core Strategy.

Openness

7. Paragraph 137 of the Framework indicates that openness is one of the essential characteristics of Green Belts. The proposal would result in a wall with gates of increased size to that of the existing front boundary wall as shown on the plans that support the proposal. The proposed enclosure would reduce openness by virtue of creating increased built development in the Green Belt.
8. Paragraph 150 of the Framework acknowledges that certain forms of development are not inappropriate development in the Green Belt provided they preserve its openness. Paragraph 150(b) indicates one of these to be engineering operations. The appellant considers that boundary enclosure would represent an engineering operation. However, I have found that the proposal would reduce openness and, as such, this would not satisfy the requirements of Paragraph 50 of the Framework.
9. I acknowledge that there are other examples of high boundaries in the area. The site and its immediate surroundings are largely residential in character that have a frontage dominated by the adjacent highway. The proposed enclosure would be moderately taller than a frontage enclosure that could be built under the provisions of the GDPO. Nonetheless, the wall with gates would have a greater height that would have an increased impact on both the spatial and visual openness of the Green Belt. Whilst the effects would be moderate, there would be a degree of harm arising from this development, in addition to that arising from the inappropriate nature of the development.
10. Consequently, I find that the proposal does not comply with paragraph 137 of the Framework as it would not preserve the openness of the Green Belt.

Highway safety

11. I have been referred to guidance issued by Kent Council Highway Authority (the Highway Authority) that requires vehicle visibility splays to be kept clear of walls, fences, hedges and vegetation and other objects exceeding 1 metre in height, and 0.6 metres for pedestrian visibility. This guidance also requires any boundary to be set back behind the splays or constructed so that it would not exceed the maximum permitted height.
12. The height and size of the proposed brick piers would restrict visibility for vehicles emerging from the property. This would limit visibility of oncoming vehicles, cyclists and pedestrians traveling along the London Road highway and pavement, although it is likely that pedestrians would become aware of a vehicle leaving the site as the gates open.
13. The appellant identifies London Road to be a distributor road that is used by a significant volume of traffic. The access would be onto this busy classified highway along which I saw that traffic travels at speed. An access that would

not provide adequate visibility, even when leaving the site in a forward gear, would be unsatisfactory. Development that does not provide safe and suitable access to and from the site for all users would have an unacceptable impact on highway safety.

14. The existing gate at the site is required to be manually opened and a remotely operated electric gate would be an improvement to the current situation. I accept that this would be the case and note that a 1 metre high enclosure could be erected under the GPDO. However, these matters do not justify a different frontage enclosure that would in itself host highway safety concerns.
15. It has been presented that the Highway Authority has not objected to the proposal. However, the Council's officer delegated report indicates that no comments were received from the Highway Authority. As such, the acceptability or otherwise of the proposal to the Highway Authority has not been clearly established.
16. For the above reasons, the proposed development would be harmful to highway safety. The proposal would, therefore, conflict with Policy SQ8 of the Managing Development and the Environment Development Plan Document 2010 the (the MDE DPD) that seeks, amongst other matters, development proposals not to significantly harm highway safety. It also conflicts with the Framework that requires development to provide safe and suitable access for all users.

Other considerations

17. The Council have raised concerns in their officer delegated report regarding the effect of the wall with gates upon the character and appearance of the area and refers to Policy CP24 of the Core Strategy. Although Policy CP24 is cited in the first reason for refusal on the Council's decision notice, this matter is not specifically referred to in that refusal reason.
18. There is a mix of types of front boundaries in the area, ranging from low brick walls with railings or hedges to tall hedges, walls and fences, all within close proximity to the site. The appellant has provided photograph examples of existing tall boundaries fronting onto London Road. The proposal would not appear appreciably out of keeping given those other front boundaries in the area. Therefore, the proposed wall with gates would not be visually harmful to the character and appearance of the area and would not materially conflict with Policy CP24 of the Core strategy that requires, amongst other matters, development to be designed to respect the site and its surroundings. I give this moderate weight in favour of the proposal.
19. The proposed front enclosure would provide the occupiers with improved security by creating a physical barrier to intruders that could deter car theft. It would also help to reduce vehicle noise disturbance, odours and fumes associated with adjacent London Road. These are personal benefits of the scheme and I give them moderate weight.

Conclusion

20. In conclusion, I have identified that the development would be inappropriate development in the Green Belt as defined by the Framework and would conflict with Policy CP3 of the Core Strategy. Furthermore, the proposal would not preserve the openness of the Green Belt as required by the Framework. In

addition, the proposal would conflict with Policy SQ8 of the MDE DPD as the development would be harmful to highway safety. The proposed development would by definition, be harmful to the Green Belt, harm which the Framework indicates should be given substantial weight. In contrast, the other considerations carry moderate weight.

21. Having regard to all matters raised, I conclude that there are no considerations sufficient to clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist. The proposed development conflicts with the development plan and the advice in the Framework.
22. For the reasons give, I conclude that the appeal should fail.

Nicola Davies

INSPECTOR