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# Appeal Decision

Site visit made on 27 July 2022

**by R J Redford MTCP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 September 2022**

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**Appeal Ref: APP/G2245/W/21/3280226**

**Little Star House, Star Hill Road, Dunton Green TN14 6HA**

- 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 and Mrs Burrige against the decision of Sevenoaks District Council.
  - The application Ref 20/03448/FUL, dated 25 November 2020, was refused by notice dated 5 February 2021.
  - The development proposed is the demolition of outbuildings and replacement with single dwelling and garage with access, parking and replacement of boundary wall with hedge.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The appeal submission included additional plans. Although showing different views of the development, they do not alter that proposed. The appellant also included an additional speed survey and visibility extent plan, both of which have been submitted with a revised application currently under consideration by the Council (reference 21/01964/FUL).
3. This additional material has been made available to all parties and no objections have been raised relating to their inclusion. Therefore, regarding the Wheatcroft Principle established under *Bernard Wheatcroft Ltd v SSE* 1982, I am content that no parties would be unfairly disadvantaged by my acceptance of these additional materials.

## Main Issues

4. The main issues 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 it has upon the openness of the Green Belt;
  - c) the effect of the proposal on highway safety; and
  - d) whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

## Reasons

### *Whether the proposal constitutes inappropriate development*

5. The appeal site is a plot of land on the opposite side of Star Hill Road to Little Star House and forms part of the outdoor space attributed to that property. It has a main single storey building in its top corner opposite Little Star House, with a gated pedestrian access through a partial boundary wall. The rest of the site is laid to lawn and enclosed by mature hedging. The site slopes away from the road and so provides open views over the hedge across the fields and valley beyond.
6. Paragraph 149 of the Framework states that the construction of a new building is inappropriate in the Green Belt but also sets out 7 exceptions to this. On review of the evidence before me I am satisfied that the proposal should be considered under paragraph 149 d), the replacement of a building. This exception requires that the new building is in the same use and not materially larger than the one it replaces.
7. The main parties agree, with reference to a previous lawful development certificate, that the proposed residential use of the site would be the same as its current designated use and there is nothing before me to conclude otherwise. Therefore, the issue turns on whether the proposed building would be materially larger than the existing building.
8. It is proposed that the lower level rooms would have full height external facing windows opening out into a courtyard. Plan 1996\_401 shows that these elements of the proposal would not be entirely below the existing ground levels of the site. It is proposed to artificially raise the ground levels to make the lower level a basement. As such I find that the proposal does not comply with Policy GB2 criteria c) and d) of the Sevenoaks District Council Allocations and Development Management Plan (ADMP).
9. It is noted that the basement would be entirely below the footprint of the proposed new dwelling and due to the artificial raising of ground levels would not be visible but the criteria of ADMP Policy GB2 must all be applied and there is no allowance in the wording of that policy for partial compliance. Therefore, the floor space the proposal would provide is subject to the floorspace allowance set out in ADMP Policy GB4.
10. Turning to ADMP Policy GB4, again all criteria must be complied with. Criterion d) requires that replacement dwellings (inclusive of outbuildings) must not result in an increase of more than 50% of the floorspace of the original dwelling. Both parties agree that the original dwelling in this case would constitute the existing buildings on site.
11. The Council consider the increase in floorspace to constitute 154.45% (taken from external measurements of the existing on site buildings, and the proposed ground and lower floor of the dwelling and garage). The appellant has considered slightly different existing and proposed floorspace measurements, the former being 91.02 m<sup>2</sup>, and the latter, as set out in the Planning Support Document written by Tye Architects, 227 m<sup>2</sup>. Nevertheless, this would still constitute an increase in floorspace of 149.40%. The proposal would therefore fail to comply with ADMP Policy GB4 and would constitute a replacement building materially larger than the original.

12. Consequently, the proposed scheme would constitute inappropriate development within the Green Belt in terms of local and national planning policy. As set out in paragraph 147 of the Framework inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

### *Openness*

13. The proposed building would be positioned towards the highest part of the site. It would be rectilinear in form and nearly the full width of site at that point. The access into the site would be widened to allow vehicles to enter and make use of the proposed detached garage. The boundary wall would be replaced by hedging. This would change the relationship of the site with the road, creating a partially enclosed parking courtyard. It is appreciated that beyond the proposed new dwelling the openness of the site would be retained, however the layout and increased scale and bulk of development in the upper part of the site would curtail views through the site and visually impinge on its open nature when viewed from Star Hill Road or from the upper floors of the properties opposite.
14. The proposed new dwelling would be located at some distance into the site away from the road and other properties opposite, when related to the current more modest building. Although this intrusion into the site would be relatively small when viewed in the wider valley context, it would nonetheless constitute an intensification of development beyond the defensible boundary created by Star Hill Road reducing the openness of the appeal site spatially and by default the Green Belt it is part of.
15. The proposal would therefore harm the openness of the Green Belt and would not comply with the criteria relating to this in ADMP Policy GB4, insofar as it requires the design and volume proposed to not materially harm the openness of the Green Belt through excessive scale, bulk and visual intrusion.

### *Highway Safety*

16. The appeal site is located near the top of a hill on the outside of a long bend in Star Hill Road. The road is reasonably narrow, and this narrowness is exacerbated by the proximity to the highway of the houses opposite. Beyond the appeal site and the houses, the road is mainly bordered by mature hedging. During my site visit (undertaken around lunch time on a weekday), it was evident that Star Hill Road, although not excessively busy is regularly used.
17. It is noted the bend and hill mean the average speed of vehicles using the part of road is below the speed limit of 60 mph, and that a viable visibility splay could be achieved for the proposed access for traffic coming down the hill. However, the appellant's highway specialist has noted that a similarly acceptable visibility splay could not be reproduced for the access in relation to traffic coming up the hill. A reduced visibility splay could be provided but would require the trimming back of the proposed hedges on the site as well as hedges on the opposite side of the road.
18. Although it is within the power of the appellant to trim and maintain the hedges within the appeal site, the hedges on the opposite side of the road are not within their ownership nor on highway land. It therefore would not be possible

to provide a suitable visibility splay for the proposed access in relation to traffic travelling up the hill.

19. I note the appellant considers the proposal would improve the right turn into the site (coming down the hill) and the proposal would only include a minor increase in vehicle movements. However, taking a precautionary approach to this issue, bearing in mind the proximity of the houses opposite to the highway edge and the narrowness of the road, I am not satisfied that the evidence demonstrates that the proposed reduced visibility splay would ensure the safe access of the site without detriment to the safety of other users of the highway.
20. Consequently, I find the proposed development would have a detrimental effect on highway safety. It would not comply with ADMP Policy EN1 or paragraph 111 of the Framework insofar as they seek to ensure satisfactory access to new development and prevent unacceptable impact on highway safety.

*Other considerations*

21. The appellants considers that the proposal would constitute an improvement in the quality of buildings on site with development concentrated in one location on previously developed land. It would also replace a boundary wall with a hedgerow, and it is proposed that sustainable construction methods would be used along with the inclusions of a ground source heat pump. Although all potential benefits of the scheme, they reflect general considerations relating to good design. To that effect and taking into account that 1 new dwelling would be created, I give these factors moderate weight.
22. The appellant asserts that permitted development rights could be implemented on the site, although no details of what could be achieved have been submitted. However, the site is positioned to the front of Little Star House and separated from it by the road. Therefore, I am satisfied the limitations this location would have on development permissible by the Town and Country Planning (General Permitted Development) Order 2015 (as amended) is unlikely to be more harmful than the appeal scheme before me and so only give this matter limited weight.
23. The main parties agree that the proposal is not found to be harmful in relation to any other matters, including living conditions, parking, impact on trees or biodiversity, the surrounding public right of ways and the Area of Natural Beauty. However, a lack of harm is a neutral factor and so does not weigh for or against the proposal.
24. I have also considered the Fruiterers Cottage appeal (reference APP/G2245/W/3271624). This related to development which was considered limited infilling in a village and so was located differently to the scheme before me. It is, therefore, not directly comparable.
25. Consequently, the other considerations do not clearly outweigh the totality of harm to the Green Belt, by reason of inappropriateness, through its harm to openness, encroachment into the countryside, and the harm to highway safety. Consequently, the very special circumstances necessary to justify the development do not exist.

## **Planning Balance and Conclusion**

26. As the Council cannot demonstrate a 5 year housing land supply, Paragraph 11 (d) of the Framework indicates that permission should be granted, unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. The application of Green Belt policy provides that to be the case here. As such, the proposal would not be the sustainable development for which Paragraph 11 of the Framework indicates a presumption in favour.
27. The proposal would, therefore, conflict with the development plan as a whole. Material considerations, including the Framework do not indicate that a decision should be taken other than in accordance with the development plan. Having considered all other matters raised, I conclude that the appeal should be dismissed.

*RJ Redford*

INSPECTOR