



Appeal Decision

Site visit made on 25 May 2022

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2022

Appeal Ref: APP/H2265/W/21/3279556

44 King Hill, West Malling, Kent ME19 4PL

- 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 Jason Shave against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/21/00577/FL, dated 25 February 2021, was refused by notice dated 26 May 2021.
 - The development proposed is demolition of existing dwelling, domestic outbuildings and sheds, and erection of 3 No. detached dwelling houses with associated alterations to access, parking, turning and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission has previously been refused for 3 dwellings at the site. The current proposal is a resubmission for smaller dwellings.
3. Since the issue of the decision notice, the paragraph numbers referred to in the National Planning Policy Framework (the Framework) have been updated, but the content of those paragraphs has not changed.

Main Issues

4. The main issues are
 - (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies,
 - (b) The effect of the proposal on the openness of the Green Belt and
 - (c) 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 inappropriate development

5. The appeal relates to land comprising an extended chalet bungalow, several outbuildings and an attached paddock to the west of King Hill alongside which are several mature trees. The site is located within the Green Belt bordered by agricultural land to the north and west and by residential land to the east.

6. The proposal is for a row of 3 dwellings located to align approximately on the axis of the existing dwelling with all buildings currently on site removed. Policy CP3 of the Tonbridge and Malling Borough Council Core Strategy (2007) on Green Belts land pre-dates the Framework but can be regarded as up to date inasmuch as it states that National Green Belt policy will be applied.
7. Framework Paragraph 149 states that the construction of new buildings should be regarded as inappropriate in the Green Belt, but cites an exception to this, at (g) *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.*
8. There is no disagreement between the main parties that the site complies with the definition of “*previously developed land*” within the Framework’s Glossary or that the proposal involves the complete redevelopment of the site. It is therefore necessary to ascertain if the proposal would have a greater impact on the openness of the Green Belt than the existing development.

Openness

9. Paragraph 137 of the Framework states that “*the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence*”. Both main parties have referred to Court decisions which have confirmed that openness has both spatial and visual aspects and that when openness is a test for a proposal that its net effect must not be harmful.
10. The appellant has provided spatial calculations for existing and proposed buildings which the Council has not contested. The floor area of single storey outbuildings scattered across the site would be consolidated within the 3 new dwellings with a reduction in floor area from 542.6 sqm to 396.1 sqm. There would also be a small reduction in volume from 2111.7 cqm to 2,107.2 cqm. Calculations on the existing block plan include a caravan, possibly incorrectly as a temporary building not listed in the site’s planning history. Nonetheless, in relation to the spatial aspect to openness there would be a mathematical benefit, at least in relation to floor area.
11. There would also be a reduction in the extent of hardstanding across the site, but the proposal would retain a substantial drive from the site access and there would be extensive hardstanding areas in front of the dwellings. The appellant has referred to an unimplemented lawful development certificate (LDC) for an additional outbuilding, not included this in the calculations. As it has not been implemented, and therefore does not exist, it would be inappropriate to do so.
12. The weight to be given to changes in the visual impact on openness is a matter of planning judgement for the decision maker, having regard not just to the massing of the proposal compared with present circumstances but to how that massing is perceived. The maximum height of the 3 new dwellings would be 6.8m compared with 6.4m for the existing chalet bungalow. They would therefore be higher. Whereas the existing dwelling has a ridged roof, the new dwellings would all have a crown top, pitched roofs with a flat top. There would therefore be greater massing at a higher level which would be spread across 3 dwellings compared with the existing development. This massing would impact on openness.

13. The impact has to set against the removal of outlying buildings closer to open countryside. In this respect the consolidation of building mass away from peripheral locations would be a benefit. Some of the outlying buildings and two caravans present at my visit are close to the site's eastern boundary and are clearly visible over the boundary fence to King Hill. Their removal would reduce the present cluttered appearance from King Hill and together with removal of some hardstanding areas provide opportunity for soft landscape measures.
14. The site has a long frontage to King Hill along which are several mature trees. However, there are gaps in the tree coverage and most existing trees are deciduous thereby providing only limited screening during winter months. The appellant has proposed a landscape scheme to strengthen planting to this boundary, but it would take several years for this to provide significant screening.
15. The appellant contends that the 0.4m difference in height between existing and proposed buildings would be "*non-material*" and "*undetectable*" but in my judgement the combination of additional height and high level massing across the 3 new dwellings would be significant in the overall impact on openness and would be harmful. The existing dwelling can be viewed from King Hill over the boundary fence and through gaps in the tree cover. The 3 proposed houses would present a visible and more prominent line of buildings of greater height and mass than those that currently exist. The visual impact would be from the public highway adjacent to the site and would have a net detrimental effect on the openness of the Green Belt. There would not appear to be a public footpath to the west of the site but the massing of the 3 houses would also be conspicuous from the open land in this direction.
16. My findings are that the proposal would not satisfy the test on openness set at Paragraph 149 (g) of the Framework. The proposal would thereby amount to inappropriate development in the Green Belt. Paragraph 148 to the Framework states that substantial weight should be given to any harm to the Green Belt. Furthermore, that "*Very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations*".

Other Considerations

17. The appellant has not formally set out very special circumstances, contending the proposal not to be inappropriate development. Nonetheless, relevant considerations have been raised.
18. The Council cannot presently demonstrate an up to date five-year supply of housing when measured against its objectively assessed need. Its latest published figures state that their supply is just 2.93 years, substantially below the target figure. In these circumstances the presumption in favour of sustainable development, set out at Paragraph 11(d) of the Framework, falls to be considered. Permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the proposal's benefits when assessed against the policies in the Framework taken as a whole. The proposal would result in a net increase of 2 dwellings which would make a modest contribution towards meeting housing need and the Government's objective to significantly boost the supply of homes.

19. However, footnote 7 to Paragraph 11(d) lists Framework policies that protect areas or assets of particular importance that may provide a clear reason for refusing a development proposal. These include land designated as Green Belt. The benefit of additional housing, and any other benefit, therefore, needs to be weighed against the substantial harm to the Green Belt.
20. The appellant has suggested the use of a planning condition to ensure that only those buildings shown on the proposed site plan exist upon first occupation of any of the proposed dwellings and to also ensure that the outbuilding subject to the LDC will not exist upon occupation. Such a condition would only ensure implementation in accordance with the proposal and would not amount to very special circumstances. It does not attract weight.
21. A further condition has been suggested to remove permitted development allowances to minimise subsequent development that could impact on the openness of the Green Belt. Such a condition would be counter to general planning advice on the use of planning conditions to not remove permitted development allowances. Occupiers of the present dwelling have been able to exercise permitted development allowances in several ways to enhance enjoyment of the curtilage, sometimes with a negative impact on the openness of the Green Belt. A planning condition to constrain permitted development allowances would offer some protection for the Green Belt beyond the level of development proposed but needs to be balanced against the discouragement to use such conditions in national planning policy.
22. The site is opposite residential development to the eastern side of King Hill. There is a cluster of large houses in a cul-de-sac, Orwell Spike, opposite the site whilst to the north of this a development of 120 houses was being constructed at the time of my visit. These developments do form part of the context for the appeal site. But the Council has not objected to the proposal in relation to harm to the character and appearance of the area. The absence of harm in this respect does not amount to very special circumstances and attracts no weight, particularly as land to the eastern side of King Hill is not in the Green Belt but the appeal site is.
23. The appellant points out that the development plan has no policy to take account of people wishing to commission or build their own home, as encouraged by Paragraph 62 of the Framework. The Council's development plan may not be up to date in this respect, but the appellant's self-build aspirations still need to be weighed against Green Belt considerations. This point carries only limited weight in favour of the proposal.
24. The appellant has referred to several other Paragraphs within the Framework in support of the development. Paragraph 69 supports the development of windfall sites for housing. Paragraph 174 requires planning decisions to contribute to and enhance the natural and local environment; the appellant's landscape scheme would contribute towards these objectives. Paragraph 119 of the Framework encourages the use of previously developed land to make effective use of land, but this is tempered by a footnote which states, "*Except where this would conflict with other policies in this Framework, including causing harm to designated sites of importance for biodiversity*". The use of previously developed land at this site, and other policies referred to by the appellant, have to be balanced against the Framework's Green Belt policies.

25. Reference has been made to the Council granting permission for two forms of alternative developments at the Anchor and Hope public house, which is within the open countryside and Green Belt, beyond the village confines of Ash (20/01086/FL and 20/01087/FL). Existing and proposed plans have been provided. These show the public house as a substantial and sprawling building, conspicuous from South Ash Road and with extensive hardstanding for parking to the site's frontage. The Council contend the massing of the public house building to be broadly equivalent to the size of two of the proposed replacement dwellings; whilst three dwellings were consented, the schemes were nonetheless considered to preserve openness. I have not been presented with the full reasoning for the decisions, but do not regard these decisions as a precedent for the appeal proposal. Each proposal has to be examined in relation to its individual merits and site circumstances.

Other Matters

26. Representations from interested parties have raised objections on Green Belt grounds, but also other issues. Some comment that the proposed structures would be lacking aesthetically and that access to and from this property on to a fast stretch of road is potentially dangerous. The Council has not objected to the design of the houses, and I have no reason to disagree. The access exists and I note that the highway authority has not objected to its retention.

Conclusion

27. Points in favour of the proposal are that it would result in a net increase of two dwellings. As the Council cannot currently demonstrate a five-year housing land supply this point attracts significant weight. The inclusion of a planning condition to remove permitted development allowances and the absence of a Council policy to recognise self-build aspirations attract only limited weight in favour of the proposal.
28. I have found the proposal to amount to inappropriate development. The trading off of the floor area and volume of existing buildings does not overcome the harmful visual impact on the openness of the Green Belt arising from the proposal's massing. The Framework requires substantial weight to be given to any harm to the Green Belt. The inclusion of land designated as Green Belt amongst the Framework's policies in footnote 7 provides a clear reason for not applying the presumption in favour of sustainable development set out at Paragraph 11 (d) and tempers the weight to be applied to housing need.
29. Accordingly, the harm resulting from the proposal is not clearly outweighed by other considerations and very special circumstances therefore do not exist. The proposal is at odds with guidance in the Framework and also in conflict with Council Policy CP3. For the reasons given above I conclude that the appeal should be dismissed.

Rory MacLeod

INSPECTOR