



Appeal Decision

Site visit made on 4 January 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Appeal Ref: APP/G2245/W/22/3299700

Little Betsoms Farm, Chestnut Avenue, Westerham, Kent TN16 2EG

- 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 W Emus against the decision of Sevenoaks District Council.
 - The application Ref 21/02785/FUL, dated 26 January 2022, was refused by notice dated 24 March 2022.
 - The development proposed is change of use of agricultural land to residential use, the erection of an outbuilding, wall and creation of a swimming pool.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed development was amended during consideration of the application and a revised application form was submitted. I have considered the appeal on the basis of the amended application dated 26 January 2022, which included the description in the banner heading above.
3. Although the amended application includes proposed change of use from agricultural to residential use, it was accompanied by evidence claiming that the appeal site has an established lawful use for residential purposes. While I have noted the statutory declaration, case law and related evidence highlighted by the appellant, I also note the contrary evidence cited by the Council. This includes photographic evidence indicating that the appeal site was, until relatively recently, part of a range of paddocks to the east and north of the dwelling.
4. Both parties accept that the appeal site is outside an area which was defined as 'residential curtilage' in a 2008 planning application. No evidence has been provided to indicate that a Lawful Development Certificate has been sought or granted in relation to the use of the appeal site since that date.
5. It is not the function of this appeal to determine whether an established lawful use for residential purposes exists. I have therefore considered the proposal on the basis that it includes change of use from agricultural to residential land, as was specified on the application form. I have nonetheless had regard to the fact that all the land in question is within the same ownership and have also taken account of evidence about the historic layout of the site, to the extent that it is relevant to the issues before me.

6. The appeal site is located within the Impact Risk Zones for five Sites of Special Scientific Interest and is within the Kent Downs Area of Outstanding Natural Beauty (AONB). These are designated sensitive areas, as defined by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). However, following consideration of the nature, scale and location of the proposed development and its potential impacts on sensitive sites, a screening direction was issued on behalf of the Secretary of State on 18 November 2022, which confirmed that an Environmental Impact Assessment is not required.

Main Issues

7. The main issues are:
- whether the proposal would be inappropriate development in the Green Belt, taking account of its effect on openness, and
 - if the proposal is inappropriate, 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

Inappropriate development, including effect on openness

8. The appeal site lies immediately to the north of a detached dwelling, which is Grade II listed and is situated in the Green Belt. The dwelling is a former farmhouse which stands to one side of an extensive range of brick and timber-framed outbuildings. These are arranged around, and largely enclose, a yard area to the west of the farmhouse. Although there are several elements to the proposed development, they all relate to the provision of an outdoor swimming pool for domestic use, on land to the north of the dwelling.
9. Paragraph 149 of the National Planning Policy Framework July 2021 (the Framework) states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. It goes on to set out a number of exceptions, which include *'the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation ...; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it'*. (Framework paragraph 149b)
10. Paragraph 150 further sets out that engineering operations (such as excavation for the proposed swimming pool) and material changes in the use of land are not inappropriate in the Green Belt. However, this is subject to a similar proviso that such development must preserve the openness of the Green Belt and not conflict with the purposes of including land within it.
11. No specific development plan policies were highlighted in the reason for refusal. However, the Council's Development in the Green Belt Supplementary Planning Document (SPD) adopted February 2015 confirms that the Sevenoaks Core Strategy adopted 2011 sets out the strategic approach to the extent of the Green Belt, while policies relating to specific forms of development are included in the Allocations and Development Management Plan (ADMP), also adopted February 2015. The SPD goes on to expand on the Council's interpretation of

relevant policies in the Framework, amongst other things highlighting that change of use from agricultural to residential land can detrimentally impact on the openness of the Green Belt.

12. Policy GB3 of the ADMP concerns the policy approach to residential outbuildings in the Green Belt. Since the parties disagree as to the established use of the appeal site, they consequently disagree as to the relevance of Policy GB3, although both are of the view that it applies only to outbuildings within an existing residential curtilage. Notwithstanding this ambiguity, the wording of Policy GB3 includes a general requirement that such outbuildings do not materially harm the openness of the Green Belt through excessive bulk or visual intrusion. Therefore, even if it had been conclusively established that the appeal site has an established residential use, the effect of the proposed development on openness would still be relevant.
13. The proposed pool house would include three rooms, providing facilities for changing and leisure, as well as an equipment/pump room. Given that the Framework refers to 'appropriate facilities' for outdoor sport and recreation, the extent to which the whole building would serve an outdoor sport or recreation purpose is a relevant consideration. While the equipment/pump room would have a clear functional relationship with the outdoor pool, provision of indoor leisure facilities does not have such a clear relationship. Given the proximity to the existing dwelling and the availability of several other nearby outbuildings, it is also not clearly demonstrated that the pool requires dedicated changing facilities. Therefore, the evidence does not clearly demonstrate that a building of the proposed scale amounts to appropriate facilities for outdoor sport or recreation.
14. The proposed development would be located north of the dwelling, separate from the established range of outbuildings which are tightly grouped around the yard. It would therefore stand somewhat apart from the established built development and would introduce built development into a part of the site that is currently open.
15. Openness is an essential characteristic of the Green Belt that has spatial as well as visual aspects. While the swimming pool itself would have little visual effect on openness, being below ground, introduction of the associated built development into a currently undeveloped part of the site would fail to preserve openness in spatial terms. The proposal would introduce built development in the short term, as well as facilitating the introduction of further minor development and domestic paraphernalia in the future. While the scope of further development would be limited by the Grade II status of the farmhouse, not all such additions would be subject to planning control and there would be a consequent further loss of openness.
16. While the pool house would be on a single storey and would not exceed the floorspace limit included in the SPD, this is presented as an upper limit and does not indicate that the effect on openness should be disregarded.
17. The proposed brick and flint wall would help to screen the proposed development and would harmonise with means of enclosure around the yard. However, it would also introduce a built feature across open land. Given its height and length, it would be a relatively substantial structure in its own right, further affecting openness in this currently undeveloped part of the site.

18. While a post and rail fence would have less effect on openness, that is not the development which is before me. Furthermore, a fence would significantly increase the visibility of the pool and associated hard surfacing. Omission of the wall's screening function would also have implications for consideration of the effect on the setting of the Listed Building.
19. The appeal site is substantially screened from wider public view, by virtue of its distance from the lane and screening provided by boundary hedgerows and an adjacent raised reservoir. As a result, the effect on openness would be very localised in nature. Nevertheless, in spatial terms, openness would not be preserved.
20. Although there were historically chicken sheds nearby, there are no such buildings at present. The remaining hard standing is level with the ground and therefore has little effect on openness, in visual terms.
21. The purposes of the Green Belt are defined in Framework paragraph 138 and include safeguarding the countryside from encroachment. Although I have taken account of the proposed change of use of land, the appeal site is nevertheless closely related to the existing dwelling. The immediately adjacent land is used for domestic livestock and is screened by hedgerows from more extensive agricultural land to the east. Therefore, while there would be a very localised encroachment into agricultural land, this would not materially affect the wider surrounding countryside. Neither would there be any conflict with the other defined purposes of the Green Belt.
22. Nevertheless, by virtue of the extent of the indoor facilities, the location and scale of the proposed development and the consequent effect on openness, I conclude that the proposal does not fall within the exceptions defined in paragraphs 149 and 150 of the Framework. Therefore, the proposal is inappropriate development in the Green Belt which is, by definition, harmful. As such, the proposed development conflicts with the Framework and with the Development in the Green Belt SPD.
23. While Policy GB3 is of limited relevance, on the basis that it applies to development within an existing residential curtilage, the proposed development also conflicts with that policy to the extent that it precludes the erection of outbuildings which would materially harm the openness of the Green Belt.

Other considerations

24. While planting of a wildflower meadow may be a positive feature in terms of biodiversity and visual interest, there is no clear evidence that such planting is a consequence of, or otherwise closely related to, the proposed development. The area in question is already planted as an orchard and further enhancement of biodiversity could proceed in the absence of additional built development. I therefore give this potential benefit limited weight.
25. The proposed removal of concrete hardstanding in the north part of the appeal site would have little beneficial effect on openness, since it is level with the ground. The concrete area is not visually intrusive and it reflects the historic agricultural use of this land, in a manner which is fairly typical of a rural area. While the Council's Conservation Officer supported removal of the hardstanding, it was described as a measure which would help mitigate the

additional hard landscaping proposed around the pool and not as a net enhancement from a heritage point of view.

Green Belt Balance

26. The proposal would be inappropriate development in the Green Belt as defined in the Framework. There would be harm to openness, albeit this would have only a very localised visual effect. The effect on the purposes of the Green Belt would similarly be very localised.
27. The Framework requires that the harm by reason of inappropriateness be given substantial weight. For the reasons explained above, I have given only limited weight to the other considerations cited in support of the proposal. The substantial weight I have given to the Green Belt harm is therefore not clearly outweighed by other considerations sufficient to demonstrate very special circumstances.

Other Matters

28. Lack of harm in relation to living conditions, trees, biodiversity or public rights of way, are neutral factors which do not weigh for or against the development.
29. The Council does not allege that the development would have an adverse effect on the Grade II listed buildings, their settings or any features of special architectural or historic interest, subject to the use of suitable conditions. Having considered the development and visited the site, I concur with that view and find that the appeal proposal would preserve the listed buildings, their settings and their significance as designated heritage assets.
30. Since the appeal site is within an AONB, great weight should be given to conserving and enhancing landscape and scenic beauty, as set out in Framework paragraph 176. The Council was satisfied that the proposed development would conserve and enhance the AONB, taking account of its design and the removal of concrete hardstanding. While I have placed limited weight on the latter, I have acknowledged the potential visual interest associated with the proposed wildflower meadow. On that basis, I similarly find that the proposed development would conserve and to a very limited extent enhance the landscape and scenic beauty of the AONB.
31. Nevertheless, these findings in relation to heritage and designated landscape considerations do not alter my conclusion in relation to the Green Belt balance as set out above.

Conclusion

32. For the reasons set out above, the Green Belt harm is not clearly outweighed by the other considerations and the very special circumstances necessary to justify the proposal do not exist. Therefore, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR