



Appeal Decision

Site visit made on 21 February 2023

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2023

Appeal Ref: APP/R3650/W/22/3294757

The Willows, Shamley Green CU5 0SR

- 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 Constanti against the decision of Waverley Borough Council.
 - The application Ref WA/2021/02190, dated 9 September 2021, was refused by notice dated 12 January 2022.
 - The development proposed is described as the provision of vehicular access and erection of gate together with the change of use of land from agricultural to private outdoor recreational land.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the development on the openness of the Green Belt and whether it constitutes inappropriate development in the Green Belt, having regard to any relevant development plan policies and the National Planning Policy Framework (the Framework);
 - The effect of the development on the character and appearance of the area having particular regard to the site's location within the countryside and as an Area of Outstanding Natural Beauty (AONB) and an Area of Great Landscape Value (AGLV);
 - The effect of the development on biodiversity including protected species;
 - The effect of the development on the safety of the highway; and
 - If the development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations that amount to the very special circumstances required to justify the development.

Reasons

Openness and whether inappropriate development

3. The development comprises the creation of a new access and track which would be sited in the location of an existing pedestrian gate. The access would be wider than existing, set further back from the road edge and a wider gate

would be erected. In addition, it is also proposed to change the use of the land from agricultural to private outdoor recreational land.

4. The appeal site and its surrounding environs are broadly rural in nature. While there are some dwellings with tennis courts and pools set nearby, these occasional developments are largely within generous grounds. The appeal site is also visible from sections of both Woodhill Lane and Madgehole Lane.
5. Paragraph 137 of the Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and openness and permanence are stated as being the essential characteristics of Green Belts. Paragraph 138 of the Framework states that Green Belts serve 5 purposes, one of which is to assist in safeguarding the countryside from encroachment.
6. Policy RE2 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites 2018 (the LPP1) and paragraph 147 of the Framework set out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework at paragraph 149 advises that the construction of new buildings in the Green Belt is inappropriate development, unless one of the specified exceptions apply.
7. The term 'building' is defined under Section 336 of the Town and Country Planning Act 1990 to include any structure or erection. The proposed gate and fencing should therefore be regarded as buildings for the purposes of this assessment.
8. The proposed gate and fencing would not meet any of the Framework's inappropriate development exceptions and I have no evidence before me to demonstrate that the development meets any of the exceptions at paragraph 149 of the Framework.
9. Certain forms of development are deemed not to be inappropriate in the Green Belt and paragraph 150 of the Framework identifies that engineering operations and material changes in the use of land may qualify, provided they preserve openness and do not conflict with the purposes of including land within the Green Belt.
10. The essential characteristics of Green Belts are their openness and their permanence and openness has spatial as well as visual aspects. The openness of the Green Belt is clear around the appeal site and beyond. The proposed development would result in greater development than the current situation. Additionally, the purpose and/or use of development can affect openness, as well as the physical presence of the development.
11. The gate, access, and driveway would affect the spatial openness of the Green Belt, but given their design, siting and limited scale I consider this to collectively impact on the visual openness of the Green Belt, to a moderate degree.
12. I also noted examples of 5 bar gates elsewhere close to the appeal site. However, I have not been provided with evidence that these are lawful and even if they were, what justification was put forward to make them acceptable. Consequently, this has limited bearing on my overall findings in respect to this main issue.

13. My attention is drawn to planning appeal, at another site, reference APP/Z3635/W/19/3237690. In this case it was suggested that a condition removing permitted development rights could be attached to the permission to protect against any potential future harm to the Green Belt by way of structure or other features constructed with the benefit of such rights.
14. With this other appeal at another site in a different borough, the Inspector found its setting to have a significant sense of containment with a clear physical and visual association with adjacent built development. These physical characteristics prevented any harmful encroachment upon the countryside.
15. However, the appeal site before me is different. It does not have a sense of containment and given the circumstances would not be identical between the schemes, this example is of limited relevance to my overall considerations.
16. Even if a condition was attached, removing certain permitted development rights, there would be potential and reasonable likelihood for the accumulation of domestic paraphernalia being introduced as part of the proposed use. The appellant suggests that they would visit the site at weekends with 'their families' to maintain and cultivate the land. It is also stated that camping, picnics and fishing of the ponds would occur.
17. This use could reasonably include parked cars, a trailer, garden style furniture and tent(s), amongst other things, being incorporated onto the site over the passage of time. This would create a harmful urbanising impact within this Green Belt location.
18. The applicant refers to a previous proposal at this site for an access and there is some similarities between the schemes. However, the current appeal proposal would be different as it introduces a new use which would have different impacts as set out above. Additionally, the previous scheme, while recommended for approval, was formally refused by the Council due to its unacceptable impact upon the Green Belt. This, therefore, does not change my overall findings in respect to this main issue.
19. For these reasons, the development when taken as a whole, encroaches into parts of the site that are broadly free from development. It also does not preserve the openness of the Green Belt or safeguard the countryside from encroachment. These factors generate unacceptable harm.
20. For the above reasons, the appeal proposal is inappropriate development in the Green Belt, which is, by definition harmful.

Character and appearance

21. Views of the appeal site are possible from both Woodhill Lane and Madgehole Lane. The site features ponds, is predominantly landscaped with mature planting, and is broadly bounded by vegetation. The appeal site and its wider environs have a largely tranquil rural character. This both on its own and via its connection with adjacent rural land makes a positive contribution to the character and appearance of the area.
22. The site is located within the Surrey Hills AONB and within an AGLV. Paragraph 176 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection. The Surrey Hills AONB Management Plan 2020 – 2025 also

describes the AONB as one of England's finest landscapes having a natural beauty and rural character.

23. The proposed development would remove an existing pedestrian gate and sections of the existing hedgerow along Woodhill Lane. The loss of this landscaping, in this prominent location adjacent to a public road, would carry some albeit moderate harm to the character of the area. However, this in combination with the urbanising effect arising from the change in use to private outdoor recreational land, as set out earlier in this decision, would have an unacceptably harmful effect on the tranquil rural character of the site and surrounding countryside.
24. While the applicant refers to a previous proposal for an access and there would be some similarities between the schemes, the current appeal proposal would introduce a new use which would have the potential for different impacts when compared to the previous proposal. Additionally, the previous scheme, while recommended for approval, was formally refused by the Council due to its unacceptable impact upon the character and appearance of the AONB and AGLV. This, therefore, does not change my overall findings in respect to this main issue.
25. Consequently, the proposed development would fail to conserve the character and appearance of the area having particular regard to the site's location within the countryside, as an AONB and an AGLV. Accordingly, it would fail to comply with the relevant provisions of Policy RE3 of the LPP1. This policy seeks to, amongst other things, respect the distinctive natural landscape and beauty of the AONB and AGLV.

Biodiversity

26. Given the rural natural characteristics of the site and the features within the locality, it is reasonable to expect that any potential effects upon biodiversity value are fully considered.
27. Policy NE1 of the LPP1 seeks to conserve and enhance biodiversity ensuring any adverse impacts would be avoided. No biodiversity evidence has been submitted to show that the proposal is compliant with this policy.
28. The appellant explains that a previous decision relating to the existing site was recommended for approval with conditions imposed to provide a precautionary working method statement to demonstrate how the development would protect biodiversity and to compensate for any loss of habitat.
29. Although that application was ultimately refused for other reasons, I have considered that previous application and the use of a condition. While there would be some similarities between the schemes, the current appeal proposal would be different as it introduces a new use which would have the potential for different impacts upon biodiversity when compared to the previous scheme. I therefore cannot assume that there would be identical impacts from both schemes.
30. Biodiversity evidence should be carried out at an early stage to give confidence that any potential constraints have informed the design of the development. If this is left until a later stage, it could prejudice biodiversity features given these were not considered and incorporated into the design of the proposal.

Therefore, I cannot be certain that the Council's concerns are unfounded and that the site would not unacceptably impact upon biodiversity.

31. For the above reasons, and in the absence of evidence to the contrary, it has not been demonstrated that there would be preservation of biodiversity including protected species. The proposal would therefore conflict with the relevant provisions of Policy NE1 of the LPP1 and the Conservation of Habitats and Species Regulations 2017. These, amongst other things, seek to conserve and enhance biodiversity.

Highway safety

32. The submitted drawings show visibility splays at the proposed access, however, there are hedgerow and tree features within the visibility splay. It would therefore be necessary to keep vegetation to a height of 1m to ensure clear lines of sight.
33. While the hedgerow could be trimmed and maintained to meet this requirement, the trees have not been identified on a plan. From the evidence and having seen the site, I cannot be satisfied the visibility splay would not be unacceptably interrupted by trees or how many trees would have to be removed to make visibility acceptable.
34. Given my findings above regarding the loss of soft landscaping which make a valuable contribution to the character and appearance of the area and the impacts upon habitat loss; it would not be appropriate to impose a condition to clear the visibility splay of all tree cover without first understanding the extent and consequent impacts this would have. In the absence of a plan showing which trees would be removed and a report assessing the habitat impacts, I do not consider a condition would be appropriate in this case.
35. I have considered the previous application where a similar visibility splay was recommended for approval. However, this was several years ago, and I have no evidence before me to suggest either the extent or maturity of the obstructions within the splay would be identical. It is reasonable, in the absence of any other evidence, to conclude that trees have matured over the intervening years. This, therefore, has limited bearing on my findings regarding this main issue.
36. Consequently, it has not been shown that adequate visibility can be achieved. I cannot therefore be satisfied that the proposal would not cause a severe impact on the safety of the highway. The proposal would therefore conflict with the relevant provisions of Policy ST1 of the LPP1 and the Framework. These, amongst other things, seek to avoid unacceptable impacts on highway safety.

Other considerations

37. The appellant asserts the gate and access is necessary for safety and security purposes and to maintain the land. However, given I have found the proposed use would be materially harmful and the appellant has confirmed that an existing gate and access allows access to the fields in connection with the existing use, I attach limited weight to this matter.
38. The appellant has highlighted the benefits the change of use would provide in terms of space to enjoy the surroundings. However, as a private interest without clearly demonstrated public benefit, I afford this matter limited weight.

Other Matters

39. I have also considered the other matters raised by interested parties. However, none of the other matters raised outweigh or alter my conclusion on the main issues. As I am dismissing the appeal for other reasons, I have not pursued these matters further.

Planning Balance & Very Special Circumstances

40. I have found that the development constitutes inappropriate development in the Green Belt, that it harms openness, and that it encroaches into the Green Belt. As such, the proposal would compromise the objective of the Framework to keep Green Belt land permanently open. I have also found that the proposal would harm the character and appearance of the area, biodiversity and highway safety.
41. In accordance with the Framework, substantial weight is attached to any harm to the Green Belt. Furthermore, the Framework advises that very special circumstances will not exist unless harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.
42. For the reasons given, I conclude that the harms have not been clearly outweighed by other considerations. Consequently, the very special circumstances required to justify the proposed development do not exist.
43. As such, the proposal does not accord with the relevant provisions of Policy RE2 of the LPP1 or the Framework, which together, amongst other things, seek to ensure that development has regard to the priority afforded to the protection of the Green Belt. The proposal would also fail to comply with other policies of the LPP1 as set out above, and therefore would conflict with the development plan, when read as a whole.

Conclusion

44. The proposal would conflict with the development plan and the Framework when taken as a whole and for this reason the appeal should be dismissed. There are also no other material considerations of sufficient weight to indicate a decision should be made contrary to this conclusion.

N Praine

INSPECTOR