



Appeal Decision

Site visit made on 23 March 2023

by Grahame Kean Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 April 2023

Appeal Ref: APP/K2230/D/22/3290741

Mousehole Fishing Lakes, Maidstone Road, Nettlestead, Maidstone, Kent ME18 5HR

- 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 Buckley against the decision of Maidstone Borough Council.
 - The application Ref 21/504959/FULL, dated 27 August 2021, was refused by notice dated 9 November 2021.
 - The development proposed is erection of detached annexe as part of existing fishery enterprise.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are
 - Whether the proposal is inappropriate development in the Green Belt (GB);
 - The effect of the proposal on the character and appearance of the main dwelling and wider area;
 - Whether the proposal would be acceptably sited in an area of high flood risk; and
 - If inappropriate development, whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, including any functional need for it, so as to amount to very special circumstances necessary to justify the development.

Reasons

Background

3. The application site is a designated Metropolitan GB in the Maidstone Local Plan 2017 (LP). The wider site has an area of 4 hectares and contains a number of commercial fishing lakes with ancillary facilities and car parking. Apart from the existing dwelling on the site, there is a mobile home and summerhouse which do not benefit from consent and are shown to be removed on the landscaping plan for the dwelling itself. These have yet to be removed and the applicant has indicated that an application may be made to retain them as a holiday let. The

site is adjoined to the south, west and east by a local wildlife site. It is designated by the Environment Agency (EA) as falling within flood zone 3a. Access to the site from Maidstone Road is obtained via an unmade track.

4. Following several temporary permissions, planning permission was granted for a permanent dwelling, Ref 19/503415/FULL. Information was then given as to the need for a permanent dwelling, with details to alleviate concerns of the EA regarding a new dwelling within the flood plain.
5. The appeal proposal is for a detached residential annexe with two bedrooms, a living area and bathroom. No kitchen is indicated on the submitted plans, however the living area could accommodate a kitchen/dining area. The annexe would be some 8m wide, 8m deep and would have a pitched roof with an eaves height of 3.2m and ridge height of 4.6m. It would be situated to the north-east of the main dwelling in the corner of the curtilage where the land slopes down.

Whether inappropriate development under NPPF paragraph 149(c)

6. LP Policy SP17 states that development within the GB would be managed in accordance with national policy for the GB. Paragraph 137 of the National Planning Policy Framework 2021 (NPPF) states that the essential characteristics of the GB are their permanence and openness. Paragraph 144 advises that substantial weight should be given to any harm to the GB and paragraph 145 states in particular that the construction of new buildings in the GB, with certain exceptions, should be regarded as inappropriate development.
7. Paragraph 149(c) is potentially relevant in that it states that the construction of new buildings in the GB would not be inappropriate where this comprises the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
8. The main dwelling was granted permission as described above and constitutes the "original" building for these purposes. It contains several bedrooms, an open plan living/lounge area and space to accommodate a store, en-suite and dressing room. It is undisputed that the annex would have a footprint in excess of 50% of the main dwelling and would be wider than the dwelling itself. The height would be lower which would give it a level of subservience, however it would appear as a large building.
9. In measuring proportionality the reference to "size" in the NPPF could include footprint, volume, dimensions including height, floorspace, or visual perception. Although the new annexe would have a degree of subservience to the host dwelling, it would represent a significant increase in built development of a scale, bulk and massing that would represent a disproportionate addition over and above the size of the main dwelling.
10. The appellants base their case for the development not being inappropriate on its being on previously developed land (PDL) within the curtilage of the existing garden, and not visually intrusive or harmful to the openness of the GB. It is also said that the building would be ancillary to the fishery business.
11. Paragraph 149(g) of NPPF would except "*limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use*". The appellants have not developed their case on this point. Putting it at its highest, the NPPF definition of PDL includes "*land occupied by a*

permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed”).

12. The footprint of the annexe would be within the curtilage but when permission was granted for the dwelling there was no assumption that the whole of the curtilage would be built on. In any event there are qualifications to the exception, including that the development should “*not have a greater impact on the openness of the Green Belt than the existing development*”. Quite clearly the addition of a substantially sized new building such as the proposed annexe would have a materially greater impact on the openness of the GB, for the reasons discussed below.
13. The proposal is to be seen as part of the existing fishery enterprise which does have ancillary facilities including car parking. Although fish farming can be an agricultural use, the annexe itself would mainly have a residential use not falling in the exception of “buildings for agriculture” at paragraph 149(a).
14. For these reasons, assuming it would be an “extension” for the purposes of NPPF paragraph 149(c), it would still be inappropriate development harmful to the GB and not to be approved save in very special circumstances.

Impact on openness of the Green Belt

15. The NPPF describes openness as an essential characteristic of the GB. It has a spatial aspect as well as visual and can mean the absence of development in spatial terms, making openness susceptible to harm even when development is not readily visible from the public realm. In spatial terms the proposal would have a materially harmful impact on the openness of the GB.
16. In visual amenity terms, the proposed building would be visibly large in scale, bulk and massing. It would be a visually intrusive and prominent addition to the built development on the plot. Accordingly some harm to openness would be caused by the proposal.

Character and appearance

17. Apart from the other structures on the site which may or may not be removed, there are a few buildings on adjoining plots in the vicinity which although separated out, do form part of the character of this immediate part of the countryside. The outbuilding would be positioned in a corner of the residential plot where the land is slightly lower than that on which the main dwelling stands, close to the boundary hedge and fence.
18. Beyond the vegetated boundary a wooded area would provide a backdrop to the building, although it would not be effectively screened from other views. Its design would not give it a subservient appearance set against the low profile of its host but would significantly increase the built development within the plot, and due to its scale, bulk and massing would be an unduly prominent addition. As such it would cause harm, although a limited, to the rural character and appearance of this part of the countryside contrary to LP Policies SP17, DM1, DM30 and DM32 which seek a high-quality design in new development that is sympathetically related to its host.

Flood risk

19. Given that a robust flood risk assessment appears to have been carried out as a consequence of which planning permission was granted of the main dwelling in 2020, the appellants do not see why there should be a significantly greater risk of flooding than was then found to be the case. Nevertheless an updated flood risk assessment and an evacuation plan have been submitted.
20. The new building would be a more vulnerable type of development according to technical guidance to the NPPF since, whilst not a separate dwelling, it would comprise habitable accommodation with sleeping accommodation at ground floor level. In applying the sequential test the availability of alternative sites needs to be appraised in context and given that the essence of the proposal is to site the annex within the main dwelling's curtilage, it seems impractical to suggest there may be other more suitable locations elsewhere.
21. Under the exception test however, the development should provide wider sustainability benefits to the community outweighing the flood risk and be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, would reduce flood risk overall. The EA is satisfied with proposals for undercroft flood storage under the building and considers the flood mitigation measures could be secured by condition. I am also satisfied that safe access and egress could be achieved from the site during a flood event. However I agree with the Council that there is no compelling need or wider sustainable benefits shown for the annex (whatever the case might have been for the dwelling when consented) that should outweigh the residual risk.
22. I conclude that, as a more vulnerable use in Flood Zone 3 the proposal fails to demonstrate a need for the development in such a location or to provide other wider sustainability benefits to the community that outweigh the flood risk, contrary to the expectations of NPPF paragraph 164a and the aims of LP Policy DM1 to avoid inappropriate new development in areas at risk from flooding.

Other considerations

23. NPPF, paragraph 148 advises that substantial weight should be given to any harm to the GB and very special circumstances will not exist unless the potential harm to the GB by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
24. LP Policy DM34 deals with accommodation for agricultural workers but expects there to be a clearly established existing functional need for the dwelling, about which no clear evidence has been supplied, including as to future occupants. Nor is it explained why any such need could not be accommodated within the main dwelling that was approved, nor why an increase in accommodation over that which was originally approved is now required specifically to meet the needs of the enterprise.
25. The appellants emphasise that the proposal would enhance the fishery business as well as meet local and business needs and "optimise" the site's potential site by putting the land to effective use. None of these assertions however are supported by robust evidence. Accordingly, limited weight is given to the benefits of the proposed development which make up the other considerations. They do not clearly outweigh the harm to the GB and therefore the very special circumstances necessary to justify the development do not exist.

Other matter

26. I have considered the information provided about other planning decisions and whilst they are said to relate to development similar to that proposed here, and some detail is provided, it is insufficient for me to make a meaningful comparison of the context of each of schemes with the present proposal which has been assessed on its own merits.

Conclusion

27. The proposed development would be inappropriate development in the GB which by definition, with the harm caused by loss of openness, is given substantial weight, conflicting with LP Policy SP17 and NPPF section 13. Limited harm would result to local character and appearance. No very special circumstances exist to justify the development, contrary to the aims of LP Policies DM1, DM30, DM32 and DM34 as described above. Therefore the appeal should be dismissed.

Grahame Kean

Inspector