



Appeal Decision

Site visit made on 28 March 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2023

Appeal Ref: APP/M3645/W/22/3299127

Land South of Furzeffield Chase, Dormans Park, Surrey RH19 2LY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Fiftypointeight Limited against the decision of Tandridge District Council.
 - The application Ref 2021/1919, dated 28 October 2021, was refused by notice dated 24 November 2021.
 - The development proposed is a permission in principle (Stage 1) for inclusion of the site on Tandridge District Councils Brownfield Register, to support the development of at least four, but no more than five new detached residential dwellings with associated parking and amenity space, subject to a future Technical Details consent application, per the Town & Country Planning (Permission in principle) (Amendment) Order 2017.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As explained in the National Planning Practice Guidance (NPPG), the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 (the Order) is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for the proposed development from the technical detail. The scope of the first stage, that is to establish whether a site is suitable in principle for development, is limited to location, land use and amount of development.
3. In respect of residential development, an applicant can apply for permission in principle (PiP) for a range of dwellings by expressing a minimum and maximum number of net dwellings as part of the application. In this instance, the PiP has been sought for the erection of a minimum of four and a maximum of five dwellings at the appeal site. The appellant has submitted an indicative site layout which shows, amongst other things, the proposed development area, the indicative positions of proposed dwellings, proposed bedroom numbers, open space, and access to each unit from Furzeffield Chase. For the avoidance of doubt, I have determined the appeal on that basis, having regard to the requirements of the above referenced Order and the NPPG.
4. The appellant indicates that the Council have inaccurately referenced the registration date of the PiP in the decision notice as 13th January 2020. From the information before me it is clear that the PiP was determined by the Council within the appropriate timeframe, as such I have determined the appeal on this basis.

5. The appellant also asserts that the Council had erroneously referenced the National Planning Policy Framework (the Framework) 2019 in their decision notice and that the decision is flawed. However, the evidence before me highlights that the officer report refers to the 2021 Framework and given that the Council based its decision on this, there has been no prejudice to either party.
6. Reference is also made to the Council not undertaking procedural measures correctly, failing to apply paragraph 38 of the Framework in applying a positive and creative approach to decision making and not weighing the social, economic and environmental benefits of the case appropriately. From the evidence before me, I find in reaching a decision the Council did consider the development in the round and applied weighting in its planning balance. As such, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and expressed reasonable concerns in respect to these issues in support of its decision. In any case, I have determined the appeal on its merits based on all of the evidence before me. Furthermore, any unreasonable behaviour either procedural or substantive should be made through an application for costs, under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5), which is not the case here.

Main Issues

7. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - The effect of the proposal on the openness of the Green Belt;
 - The effect of the proposal on the character and appearance of the surrounding area; and
 - Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances to justify it.

Reasons

Whether inappropriate development

8. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 149.
9. Policies DP10 and DP13 of the Tandridge Local Plan Part 2: Detailed Policies 2014 – 2029, adopted 2014 (TLP) are broadly consistent with the approach of the Framework, in that there is a presumption against inappropriate development subject to very special circumstances. TLP Policy DP13 also provides several exceptions that would not be considered inappropriate development in the Green Belt.
10. The appellant contends that the proposal would infill an area of land in Dormans Park which would be considered as an extension to the village. As

such, criterion e) of paragraph 149, and Policy TLP DP13 C are the most relevant to this appeal, which relate to the limited infilling in villages.

11. Dormans Park is not included within the list of village boundaries within the Green Belt, as specified in TLP Policy DP12, and I have not been provided with any compelling evidence that the appeal site should be included as such. Nevertheless, for the purposes of considering this main issue, I have considered whether the appeal site forms part of the village's extent on the ground.
12. From my site observations, the appeal site is located in a residential estate, consisting of verdant and undeveloped land forming part of a larger wider area of open land. It is acknowledged that in the Tandridge District Core Strategy, adopted October 2008 (TCS) Dormans Park was considered a settlement given the close proximity of the existing residential dwellings. However, there is a distinct lack of communal facilities and services within the immediate area for the existing residents of Dormans Park, which in my view, does not represent a village setting.
13. Nevertheless, it is prudent to assess the remaining considerations of whether the proposal would amount to 'limited infilling'. Neither term is defined in the TLP or the Framework and no definition has been put before me by the appellant. They are essentially questions of fact and planning judgement for the planning decision-maker. In my experience, to fill a gap between buildings in an otherwise built up/developed frontage is a commonly understood and widely held meaning of the term infill. This is not such a site. Moreover, the appeal site occupies a long open area of undeveloped land directly opposite a row of houses separated by a road. There is a significant degree of separation with no development frontage between the sporadic residential development adjoining the site to the east, and the end of Swissland Hill to the west. As such, the proposal would be viewed more as an expansion to the existing residential estate, than infill.
14. The previous Inspector¹ also opined, that '*the site itself is entirely free from existing buildings and structures. It is a considerable area of land stretching along a highway. Whilst there are existing properties nearby, the established road network provides an important break. These factors indicate that the land does not form an existing frontage where other built development is prevalent.*' In dismissing the scheme, the Inspector concluded that the number of dwellings proposed (up to nine) could not be described as limited. It is acknowledged that the maximum number of dwellings proposed under the appeal scheme has been reduced from nine to five. Nevertheless, given the open nature of the site described, the amount of development proposed would still not be construed as limited.
15. Even if I were to consider the proposed development was within a village, for the reasons set out above I do not consider either infill or limited. Consequently, the proposal would not meet any of the exceptions set out in paragraph 149 of the Framework and Policy DP13 of the TLP. For these reasons, the proposal would be inappropriate development in the Green Belt. By definition this is harmful and the proposal would conflict with Policies DP10 and DP13 of the TLP and the objectives of the Framework.

¹ PINS Appeal Ref: APP/M3645/W/19/3241571

Openness

16. The Framework advises 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. The appeal site occupies a prominent roadside location and given the green, open, undeveloped characteristics, it makes a significant contribution to the openness of the Green Belt.
17. Openness can have both spatial and visual aspects and the proposal would introduce a substantial quantum of residential development on to a site which is generally open and free from any significant permanent development. Therefore, the introduction of built form, as proposed on the indicative plans, would have an adverse impact on the openness of the Green Belt in spatial terms.
18. The indicative plans also show that the proposed dwellings would have a linear layout with generous plot sizes, similar to the existing pattern of development within Dormans Park. Notwithstanding the indicative layout, the proposal highlights that the dwellings would be for 5 and 6 bedroomed properties which would be considerably larger and of a greater bulk and site coverage than what exists at the site currently. This would be particularly evident in views experienced from the approach along Furze Field Chase adjacent to the site. As such, given the variation between the existing and proposed I conclude in visual terms, that the scheme would have a harmful effect on the openness of the Green Belt.
19. Overall, I find that the proposal would lead to a significant loss of Green Belt openness and would therefore conflict with the fundamental aim of Green Belt Policy, as set out above.

Character and appearance

20. There are existing residential properties located in the immediate vicinity to the appeal site providing a more developed feel. Whilst the existing properties are positioned on generous plots providing low density development, they are nevertheless grouped together, which contrasts strongly with the much less developed open spaces, particularly to the south of the appeal site. The appeal proposal would be located on the edge of this setting, occupying an open and undeveloped location. The appeal site provides an open break between the ancient woodland and surrounding verdant area to the south, and the more developed environment of Dormans Park to the north.
21. Whilst the quantum of development has been reduced from the previously dismissed scheme, the introduction of further residential units and the extent of built form proposed would still result in the greater urbanisation of the appeal site, detracting from its transitional nature. I acknowledge that the proposal could include high quality design, and this would form part of any later detailed design consideration at the Technical Details Consent stage, however it is the level of overall development proposed that would harm the character and appearance.
22. Furthermore, the creation of new residential curtilages and future pressure for associated outbuildings, such as sheds and other domestic paraphernalia, would not be sympathetic to the area. The resultant change would be

discordant with the otherwise predominantly open aspect and dominant verdant qualities of this part of Dormans Park. In this respect, I would concur with the previous Inspector's findings that the appeal scheme would urbanise the site and would harm the character and appearance of the surrounding area.

23. Consequently, the appeal proposal would conflict with the principles of TLP Policy DP7, and TCS Policy CSP18 which amongst other things, require all new development to be of high-quality design, responding to and respecting the character, setting and local context. The proposals would also conflict with Paragraph 130 c) of the Framework insofar as it requires development to be sympathetic to local character.

Other considerations

24. As set out above, the development constitutes inappropriate development in the Green Belt. I have also found that it would be harmful to the openness of the Green Belt, harm which carries substantial weight. The Framework is clear 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.
25. There is dispute between the parties in respect to whether the appeal site is located within a sustainable location. Although I have found there to be a distinct lack of communal facilities and services within the immediate area, I acknowledge that there would be access to these further afield via public transport. In this respect I therefore afford moderate weight to this factor in favour of the development.
26. I note that the appeal site may have been previously used for equestrian purposes, however I concur with the previous Inspector that this has no relevance in determining whether or not the proposal would be inappropriate development in the Green Belt. Furthermore, whilst there could be restrictive covenants on the land, these operate independently of planning considerations. Private covenants prohibiting or allowing certain types of use are a civil matter and not within the remit of planning control. As such, these matters do not carry positive weight in favour of the development and would be neutral factors in the planning balance.
27. It is common ground between the Council and the appellant that the proposal would be beneficial in terms of meeting the wider housing needs of Tandridge District Council. The appellant contends that the Council currently has a significant deficiency with a 1.43-year housing supply, which is not disputed by the Council. The appeal scheme would provide a windfall development which in providing 4 to 5 houses would make a modest contribution to Tandridge District Council's housing undersupply, albeit more important given that the Council is unable to demonstrate a 5-year supply of deliverable housing sites. As such, this attracts significant weight in favour of the development.
28. The proposal would also result in some small social and economic benefits, including the support future occupiers would give to local businesses and services. The proposal also benefits from sufficiently sized units. To these benefits I apportion modest weight given the limited scale and nature of the proposed development.

29. The appellant draws my attention to a recent appeal decision² also within the Green Belt in Tandridge District Council. In allowing the appeal, the Inspector highlighted an acute deficiency and shortfall in the local housing supply and delivery, alongside an extremely bleak outlook for local affordable housing provision within the district. In assigning weight, the Inspector found that the harm identified as arising from the appeal proposal, was clearly outweighed by the other considerations identified. These included the provision of 100 houses, including 40 affordable homes, and the additional benefits of the re-provision of enhanced sports facilities, a net gain in biodiversity and the accumulation of other economic, social and environmental benefits.
30. I have acknowledged the chronic shortage in housing supply and have apportioned this significant weight accordingly. Nevertheless, whilst the housing context between these schemes is consistent, based on the evidence before me, the allowed scheme relates to a significantly larger multi dwelling development. This development is not directly comparable to the appeal proposal and is a substantial distance from the appeal site. On the basis of the information I have about this case, the context would appear to be materially different.
31. In any case, each scheme must be considered on its own merits. While consistency in decision making is important, ultimately, what constitutes an exception under Green Belt policy needs to be determined in the light of the specific circumstances and context of each case. I am not therefore persuaded that this example is directly comparable to the proposal before me and I afford it limited weight.

Other matters

32. Part of the appeal site falls within the Ashdown Forest Special Protection Area (SPA). This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA, either alone or in combination with other plans and projects.
33. The Council has advised that a Preliminary Ecological Assessment (PEA) submitted by the appellant highlights that there would be no adverse impact on the Ashdown Forest SPA due to the net increase in residential units on the site. The PEA further highlights that the proposal would not adversely impact on protected species on-site and that ecological concerns on the site are capable of being addressed or mitigated at the Technical Detailed Consent stage. In any event, as I am dismissing the appeal due to the harm of the proposal on the Green Belt and character and appearance of the area, I do not need to consider this matter further, as no significant likely effects on the SPA would arise from my decision.

² PINS Ref: APP/M3645/W/22/3309334

Planning balance and conclusion

34. The proposal would constitute inappropriate development in the terms set out by the Framework and would result in harm to the openness of the Green Belt. The scheme would consequently conflict with one of the five purposes of the Green Belt identified by the Framework in safeguarding the countryside from encroachment. The Framework requires that substantial weight should be given to any harm to the Green Belt. In addition, I have also found harm to the character and appearance of the area. The development would therefore be contrary to the above cited policies of both the development plan and the Framework.
35. It is common ground that the Council is currently unable to demonstrate a 5-year supply of deliverable housing sites and therefore the policies most important for determining the application are considered to be out-of-date. However, as I have found harm to the Green Belt, paragraph 11.d) i. of the Framework applies and, therefore, the application of policies in relation to the protection of the Green Belt provide a clear reason for refusing the development. Accordingly, the presumption in favour of sustainable development does not apply.
36. Overall, for the reasons set out above I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. Therefore, I conclude that the appeal is dismissed.

Robert Naylor

INSPECTOR