



Appeal Decision

Site visit made on 28 March 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Appeal Ref: APP/G2245/W/22/3294189

Land adjacent to Spile Bank, New Road, Penshurst TN11 8EJ

- 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 John Worster against the decision of Sevenoaks District Council.
 - The application Ref 21/03435/FUL, dated 11 October 2021, was refused by notice dated 15 December 2021.
 - The development proposed is described as 'Application For Horticultural Use On Land and Timber Building for Storage And Shelter'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An illustrative planting scheme was provided with the appeal (drawing no. OWL/KL/001). This was originally prepared in connection with a previous application for retention of a mobile home. There is disagreement between the parties as to whether it was also provided to the Council with the application which is before me. However, this drawing is broadly consistent with details of the proposed use, as explained in the Design and Access Statement (DAS)¹. I am therefore satisfied that no prejudice would arise to any party as a result of my consideration of this evidence and I have had regard to it when considering the appeal.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, and
 - the effect of the proposal on highway safety, with particular regard to the relationship between the existing access and adjacent bridleway.

Reasons

Whether the proposal would be inappropriate development

4. The appeal site is a parcel of land in rural surroundings, located in the Green Belt. It contains no built development at present, although it adjoins a row of

¹ Ashdown Planning Consultants, Design and Access Statement incorporating Planning Support Statement

dwellings on one side and there is a wider pattern of sporadic development along the rural road network. The land slopes down from the road towards a more expansive landscape of open fields.

5. The existing use of the site is described on the application form as 'grassland'. During my site visit I observed that this comprised rough grass and low-lying vegetation, enclosed by hedgerows around the boundaries. There are some larger trees on the lower part of the site, separating it from the open fields beyond. A hardstanding in the centre of the site corresponds with the siting of an unauthorised mobile home, which has recently been removed. There is little indication that the land is currently cultivated or in active use.
6. The application describes the intended use of the land as being for horticultural purposes and the range of proposed activities described in the DAS is consistent with that intention. The appellant further confirms that the land would remain in private use.
7. Section 55(2)(e) of the Town and Country Planning Act 1990 (the Act) excludes the use of land for the purposes of agriculture from the definition of development for planning purposes. Furthermore, section 336(1) of the Act defines agriculture as including horticulture. Therefore, although the description of the proposed development includes horticultural use of the land, this element of the proposal does not, in itself, comprise development.
8. With regard to the proposed building, paragraph 149 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt. However, it goes on to set out a number of exceptions, which include 'buildings for agriculture and forestry' (paragraph 149a). In the Sevenoaks Core Strategy², Policy LO1 requires that development outside defined settlements is compatible with policies for protecting the Green Belt. Subject to a similar proviso, Policy LO8 allows for development that supports the maintenance and diversification of the rural economy, including development for agriculture.
9. While the size of the proposed storage facilities would be relatively generous in relation to the scale of the plot, Framework paragraph 149a does not include any threshold for the size of agricultural building which is permissible. Nor does the Framework require that buildings erected in line with paragraph 149a are used in association with a trade or business or that the need for such buildings is otherwise justified, in relation to any positive contribution to the rural economy or otherwise.
10. The plans indicate that the proposed building would be a timber framed shed with double doors, of simple rectangular form, with very limited fenestration and lightweight construction. No sanitation or utilities are indicated on the plans. Its proposed design and construction would, taken at face value, be consistent with the erection of a building for agricultural purposes.
11. The intended use of the building for storage of tools and equipment would clearly be connected with the horticultural use of the site. Some limited indoor space to shelter from the elements while maintaining the land could be regarded as being ancillary to the horticultural use, depending on the scale and

² Sevenoaks District Council Local Development Framework Core Strategy adopted February 2011

extent of such facilities. Had I been minded to allow the appeal, this aspect of the proposed use could have been controlled through appropriate conditions.

12. The Courts have established³ that where development is found to be 'not inappropriate' within the Green Belt, the question of its effect on openness and the purposes of including land in the Green Belt does not require further consideration. By excluding agricultural buildings from the definition of inappropriate development, paragraph 149a implicitly accepts that there may be associated effects on openness, but that this does not render such development inappropriate in principle.
13. For the reasons set out above, subject to the imposition of suitable conditions to regulate the use of the proposed building, I conclude that the proposed development would not be inappropriate development in the Green Belt. It would not conflict with relevant requirements in Policies LO1 and LO8 of the Sevenoaks Core Strategy or relevant paragraphs in the Framework. These policies, amongst other things, allow for the erection of buildings for agriculture in the Green Belt.

Highway safety

14. Vehicular access to the site is by means of a field gate in the southwest corner, which is set back from the road by approximately one car length. Immediately adjacent is a single-track private access road which leads from New Road (B2188) towards a handful of dwellings and the agricultural land beyond the site. Public Bridleway SR438 follows the same route, such that both the bridleway and access road are outside but immediately parallel to the boundary of the appeal site. The bridleway continues across New Road, becoming a narrower and more informal path.
15. This intersection is a focus for a variety of highway users. These include vehicles turning in and out of both the site and the adjacent access road, vehicles travelling along New Road and more vulnerable road users such as walkers and equestrians using the public bridleway to either side of the road. The very close relationship between the site access and bridleway increases the possibility of conflict between walkers, equestrians and vehicles turning in or out of the appeal site and/or the adjacent access road.
16. Visibility at the site access and adjacent junction is currently poor. Boundary hedgerows along New Road restrict visibility when pulling out of the site and this is exacerbated by the upward slope towards the road. At the time of my site visit, views of oncoming vehicles were significantly restricted by vegetation in both directions. The section of New Road nearby to the south has an unrestricted speed limit and although traffic was relatively light at the time of my site visit, I observed several vehicles travelling at speed.
17. The access to the appeal site already exists, and I acknowledge that its use in relation to agricultural use of the land is not restricted. However, the appellant has made clear that the purpose of the proposed building is to enable more active use of the site. The availability of storage and shelter would enable a wider range of activities, including fruit and vegetable growing which would require regular maintenance and care during the growing season. Since the

³ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

proposed building would provide shelter, it would also facilitate working at the site in all weathers.

18. I have noted that personal circumstances have prevented the appellant from visiting the site regularly in recent years and therefore vehicle movements have been suppressed. Nevertheless, the evidence clearly indicates that the proposed building would facilitate a materially more intensive use of the land than is reasonably likely in its absence. Therefore, there would be a material increase in vehicle movements in and out of the site access, as a consequence of the proposed development.
19. Increased use of the access would increase the current level of risk, including the risk to more vulnerable users of the bridleway. There would accordingly be a modest but material deterioration in highway safety.
20. The Council has highlighted that the hedgerows which obstruct visibility are outside the boundary of the appeal site and not within the appellant's control. No clear evidence has been provided to the contrary. As such, conditions requiring maintenance of appropriate visibility splays could not be enforced and would be ineffective in securing improved visibility in the long term. Even if the front boundary hedgerow is within the site, the hedgerow on the south side of the bridleway is clearly well beyond the appeal site boundary and therefore there is no scope to secure improved visibility in this direction.
21. For the above reasons, I conclude that the proposal would be unacceptably harmful to highway safety, with particular regard to the relationship between the existing access and the public bridleway. The harm to highway safety cannot adequately be mitigated. As such, it would conflict with relevant requirements of Policies EN1 and T1 of the Sevenoaks Allocations and Development Management Plan 2015 (ADMP). These policies, amongst other things, require that development provides satisfactory means of access for vehicles and pedestrians and that any adverse safety impacts are mitigated.

Other Matters

22. I have had regard to support expressed by the Penshurst Parish Council, noting that they consider the size and visual impact of the proposed building to be acceptable. However, for the reasons set out above I do not share their view that highway visibility is not a concern.
23. The advantages of more productive use of the land would be primarily of private benefit. There may be wider public benefits in terms of enhancements to biodiversity. However, there is little substantive evidence as to the extent of any such enhancements.
24. The site is within the High Weald Area of Outstanding Natural Beauty (AONB). The natural beauty of the AONB, as defined in the AONB Management Plan⁴, includes a pattern of small, irregular and productive fields bounded by hedgerows and woods. Small-scale horticulture is listed among the land-based uses which are characteristic of the landscape of field and heath. As such, small scale development for agricultural purposes is an established feature of the rural landscape.

⁴ The High Weald AONB Management Plan 2019-2024

25. Although the first reason for refusal alluded to the character of the Green Belt, the evidence provided suggests that the Council's concerns in this regard primarily related to openness. The Officer Report confirmed that the design and siting of the building would comply with design principles set out in Policy EN1 of the ADMP. The reasons for refusal did not identify any conflict with ADMP Policy EN5, which relates to the effect of development on the landscape.
26. For the above reasons, I find that the natural beauty of the AONB would be conserved. However, neither absence of harm to the AONB, nor the potential for biodiversity enhancements would outweigh the identified harm to highway safety.

Conclusion

27. Whilst the proposal would not be inappropriate development in the Green Belt, it would be harmful to highway safety. 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