



Appeal Decision

Site visit made on 7 March 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Appeal Ref: APP/M2270/W/22/3300771

Land adjoining Pax Cottage, Stockland Green Road, Speldhurst, Tunbridge Wells TN3 0TU

- 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 Your Best Home Limited against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/04144/FULL, dated 15 December 2021, was refused by notice dated 16 February 2022.
 - The development proposed is demolition of existing garages, erection of a single storey dwellinghouse with associated access and landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The site lies within the Green Belt. In the circumstances the main issues in this case are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (2021) (the Framework) and any relevant development plan policies;
 - Whether the proposed dwelling would be in a suitable location having regard to local policies concerned with housing in rural areas;
 - The effect of the proposal on ecology and protected species; and
 - If it is inappropriate development, whether harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances needed to justify the development.

Reasons

Whether the proposal is inappropriate development

3. The appeal site, on which it is proposed to erect a new single storey dwelling, is accessed off a narrow lane. The land, which is partly hard-surfaced, houses a concrete built, single storey block of three garages.

4. The site benefits from a Lawful Development Certificate¹ (LDC) for car parking on hard standing and storage within 3 x lock up units. Consequently, both parties agree that those areas of the site constitute previously developed land.
5. The Framework 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. One such exception at paragraph 149 (g) being the complete redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development.
6. At paragraph 219, the Framework states that due weight should be given to existing policies according to their degree of consistency with the Framework. Core Policy 2 of the Tunbridge Wells Core Strategy (2010) (CS) states that development should accord with national planning policy. Policy MGB1 of the Tunbridge Wells Borough Local Plan (2006) (LP) was drafted prior to the publication of the Framework. It largely reflects the Framework in providing exceptions to inappropriate development. Whilst it does not include the exception referred to above, related to the redevelopment of previously developed land, it is an adopted development plan policy to which I need to have regard.
7. The Planning Practice Guidance (PPG) confirms that openness is capable of having both spatial and visual aspects. The proposal would involve the demolition of the garage block and the erection of a new dwelling. The dwelling has been reduced in size from the previous appeal scheme² and its footprint, whilst of modest size, would be a small amount larger than that of the existing garage. The appellant has provided figures for the volume of the proposed building, but not for the existing garages. However, it appears that the height of the proposed dwelling's pitched roof would be taller than the existing garages on site which have a flat roof. As a result of the small increase in built form, the proposal would result in a minor reduction in the openness of the Green Belt in spatial terms.
8. Whilst the siting and surrounding vegetation would limit the dwelling's visibility to some extent, it would not fully screen it from view, and it would remain visible from the site's access from Stockland Green Road. The development includes the change of use of the site from car parking to residential. The site is not currently in the use referred to in the LDC, so appears open. The residential use is likely to involve the introduction of domestic paraphernalia within the surrounding curtilage. For these reasons, I consider there would be a reduction to the openness of the Green Belt in visual terms.
9. There may be future pressure to construct further outbuildings, for example a garage for parking or storage, although this may be subject of separate consideration by the Council. Permitted development rights conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015 enable provision of outbuildings in certain circumstances. Paragraph 54 of the Framework states that planning conditions should not be used to restrict permitted development rights unless there is clear justification to do so. This adds to the harm I have found to the visual and spatial harm to the openness of the Green Belt.

¹ 19/00189/LDCEX

² APP/M2270/W/17/3186775

10. In view of the above, I find that the proposed development would have a greater impact on openness in both visual and spatial terms than the existing development and so would not preserve the openness of the Green Belt. It would also conflict with the purposes of including land within the Green Belt, including assisting in safeguarding the countryside from encroachment. The proposal therefore does not benefit from the exception set out in paragraph 149(g) of the Framework and would be inappropriate development in the Green Belt when assessed against these criteria. It would also conflict with Policy MGB1 of the LP and Core Policy 2 of the CS.

Suitable location

11. The site is located outside the Limits to Built Development (LBD) as defined in Policy LBD1 of the LP. Policy LBD1 directs new development primarily to defined areas within existing settlements. The supporting text explains that this is to ensure sustainable development patterns, which concentrate development within the built-up area while limiting development in the surrounding countryside.
12. The Council suggests that the site would be isolated in that occupiers of the proposal would have a reliance on the private car as a means of accessing local services. The Council reference paragraphs 105 and 152 of the Framework in this regard which outline that significant development should be focused on locations which are or can be made sustainable.
13. Given its proximity to existing dwellings, the appeal site is not isolated in the context of paragraph 80 of the Framework, which sets out that new isolated homes should be avoided in the countryside.
14. The site is not within walking distance of shops or community facilities and there are no local bus services servicing the site. Whilst cycling would be an option available to future occupiers, the surrounding roads are hilly, narrow and largely unlit. Consequently, I consider this is not likely to be an attractive option for the majority of people, particularly outside daylight hours and in inclement weather. Occupiers of the new dwelling would therefore be largely reliant on the private car.
15. However, the scale of the proposal, which would have a single bedroom, is unlikely to attract a significant number of vehicular movements. It seems to me, the site's lawful use as three lock up units with car parking could attract a similar or greater number of vehicular movements. Consequently, it is, unlikely that there would be a significant increase of vehicular movements as a result of the proposal.
16. Due to the site's location outside of an existing settlement there would be a tension Policy LB1. However, whilst the Framework is clear that sustainable transport should be promoted, it does recognise at paragraph 105 that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and this should be taken into account in decision making. Furthermore, Policy LBD1 of the LP and Core Policies 1, 6 and 14 of the CS do not require proposals to demonstrate ease of access to local services with sustainable transport options.
17. As a result, I do not find overall conflict with Policy LB1 of the LP or Core Policies 1, 6 and 14 of the CS. Neither do I find conflict with the principles of

the Framework which seek to avoid isolated homes in the countryside and to promote sustainable development in rural areas where housing should be located where it will enhance or maintain the vitality of rural communities.

Ecology and protected species

18. The ecological appraisal submitted with the planning application identified a need for a Great Crested Newt survey. Whilst this was not provided at application stage it was submitted with the appeal. The survey confirms that Great Crested Newts are not present within the zone of influence of the appeal site.
19. To compensate for the loss of scrub habitat as a result of the proposal, ecological enhancements are also suggested. These include planting of native scrub patches and the seeding of a shaded wildflower mix which would enhance the ecological connectivity across the site. If I were to conclude that the appeal should be allowed, I would impose planning condition to ensure that the ecological enhancements were secured.
20. I note the Council's reference to the proposal not achieving ecological net gain. However, this does not form part of the reason for refusal, nor have I been directed to any policy requirement for this.
21. I note that grass snakes may have been observed within the site. However, the ecological appraisal does not record the presence of grass snakes, and I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to this matter.
22. I conclude that sufficient information has been provided to assess the impact of the proposal with regard to ecology and protected species. Therefore, in this respect, it would not be contrary to Core Policy 4 of the CS and Policy EN1 of the LP which require, amongst other things, that development has no significant adverse effect on any features of nature conservation importance, whilst seeking to avoid a net loss of biodiversity across the Borough as a whole. Neither would there be conflict with the principles of the Framework which state that planning decisions should contribute to and enhance the natural and local environment.

Other Considerations

23. The appellant has brought to my attention that the site benefits from an extant outline permission³ for a larger replacement garage block. It also benefits from the LDC for use of the site for car parking and the use of the existing building for storage purposes. The appellant suggests that the combination of the planning permission and certificate of lawfulness provide a fallback position that would outweigh the harm to the Green Belt.
24. For significant weight to be afforded to a fallback position, there needs not only to be a reasonable prospect of it being carried out in the event that this planning permission were to be refused, but it would also need to be more harmful than what would be allowed by the scheme for which permission is sought. As a result, an element of planning judgement is also involved in that assessment process.

³ 20/01223/OUT

25. The built volume of the appeal proposal would be ten cubic metres less than the extant outline permission. Consequently, the built form of the fallback scheme could have a greater impact on the openness of the Green Belt than the proposed dwelling.
26. The appellant states that in the event that planning permission is not forthcoming for re-development, the replacement garages would be constructed and the site would be made commercially available for its permitted storage use.
27. I have not been provided with compelling evidence to demonstrate that there would be demand for the future use of the larger garage block and surrounding site area for car parking. For these reasons, I consider that there is not a realistic prospect of the land being used for its previous storage use. For this reason, I have applied limited weight to the fallback position.
28. The Framework seeks to significantly boost housing supply and the proposal would contribute to the local housing supply. The additional residential unit provides limited weight in favour of the proposal.

Other Matters

29. Since the appeal site is within an Area of Outstanding Natural Beauty (AONB), great weight should be given to conserving and enhancing landscape and scenic beauty, as set out in paragraph 176 of the Framework. The Council does not consider that the proposal would be harmful to the AONB. Having considered the development and visited the site, I concur with that view and find that the development would conserve and enhance the valued landscape of the AONB.

The Green Belt Balance and Conclusion

30. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The proposed dwellinghouse with associated access and landscaping would comprise the redevelopment of previously developed land. It would have a greater impact on the openness of the Green Belt than the existing development. As such, it would comprise inappropriate development. It would also conflict with the purposes of including land within the Green Belt.
31. Very special circumstances will not exist unless the harm to the Green Belt is clearly outweighed by other considerations. I have afforded the fallback position limited weight. The contribution of one dwelling to the supply of housing is also afforded limited weight.
32. The proposal may be compliant with various other provisions of the development plan, including in relation to the effect on ecology and the AONB. I have also found no harm in relation to any matters other than the harm to the Green Belt. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weight in favour of the proposal.
33. Taking all the above into account, the substantial weight to be given to Green Belt harm is not clearly outweighed by other considerations, either individually or cumulatively, sufficient to demonstrate very special circumstances. Therefore, the proposed development is contrary to Core Policy 2 of the CS,

Policy MGB1 of the LP and the Framework that seek to protect the Green Belt from inappropriate development.

34. The Council acknowledge that they do not have a five-year supply of deliverable housing sites. As a result, paragraph 11.d of the Framework states that the development plan policies which are most important for determining the application are out-of-date. This includes the policies within the CS and LP referred to above.
35. Bullet point (i) of paragraph 11.d clarifies that permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance, including the Green Belt, provide a clear reason for refusing the development. As I have explained above, there would be harm to the Green Belt. That provides a clear reason for refusing the development.
36. I therefore conclude that the proposed development would conflict with the development plan as a whole and there are no considerations, including the Framework, that indicate otherwise. Consequently, the appeal should be dismissed

B Pattison

INSPECTOR