



Appeal Decision

Site visit made on 11 July 2023

by R Catchpole BSc (hons) PhD MCIEEM IHBC

an Inspector appointed by the Secretary of State

Decision date: 10th August 2023

Appeal Ref: APP/K2230/W/22/3302634

Land north of 'Foxdene', Wrotham Road, Meopham, Gravesend DA13 0QG

- 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 W Walden against the decision of Gravesham Borough Council.
 - The application (Ref: 20220284), dated 15 March 2022, was refused by notice dated 16 June 2022.
 - The development proposed is the erection of detached chalet bungalow.
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Decision

1. The appeal is dismissed.

Main Issues

2. As the appeal site is in the Green Belt (GB) the main issues are:
 - i. whether the proposal would be inappropriate development in the GB and the effect of the proposal on its openness and its purposes;
 - ii. whether or not there is any other harm that would result from the proposal with particular regard to countryside character and biodiversity; and
 - iii. whether or not any harm to the GB by reason of inappropriateness and any other identified harm, would be clearly outweighed by other considerations, so as to amount to Very Special Circumstances (VSC).

Reasons

Background

3. The appeal site is located on the western side of Wrotham Road (A227), to the south of Meopham Green village. The site is outside the village envelop and within the GB. The main core of the village lies to the north with scattered farmsteads and occasional residential development along the A227 to the south. This includes an adjacent residential dwelling known as 'Foxdene'. Its curtilage runs parallel to the southern boundary of the appeal site. The western boundary abuts agricultural land whilst the northern boundary is adjacent to a land parcel surrounded by trees and hedgerows which appears devoid of agricultural use despite having the general appearance of an unvegetated paddock.

4. The southern part of the village is loosely arranged along the A227 but has a clear visual boundary on its eastern side in the form of a residential dwelling known as 'Cherry Hay'. This is defined on the western side of the road by the Meopham Veterinary Hospital. The limited setback from the road and open boundaries of these properties are such that they provide a clear visual break between the village and wider countryside, as viewed from the A227. Moving south, I note that the ivy-clad, closeboarded fence of the appeal site merges with the verdant vegetation beyond. The setback of 'Foxdene' within its plot is such that it is only glimpsed and it is not, in any event, read as part of the settlement given the separation distance from the Veterinary Hospital.
5. The site itself comprises an area of secondary woodland with an ivy dominated field layer and a more open area of ruderal vegetation in the southern part of the site which is dominated by brambles, false-oat grass and hogweed. Ornamental plant species are generally lacking, with the exception of a cedar tree towards the western plot boundary. The site is devoid of any permanent or fixed surface structures and has blended into the wider landscape despite being formerly associated with the residential curtilage of Leylands Farm Cottage.

Green Belt Considerations

Whether Inappropriate

6. Paragraph 147 of the Planning Policy Framework 2021 (the Framework) states that inappropriate development is, by definition, harmful to the GB and should not be approved except in VSC. Paragraph 149 goes on to list a number of exceptions. The appellants highlight the fact that the site is 'situated within a cluster of residential dwellings' and that the area was previously used as a residential garden. Consequently, paragraphs 149(e) and 149(g) potentially apply in terms of whether the proposal would lead to limited infilling within a village or the redevelopment of previously developed land (PDL).
7. The appellants accept that the appeal site is not located within any designated settlement boundary and that it is outside the village envelop but suggest that the proposed development would be more related to the village than the surrounding countryside given the proximity of nearby dwellings. However, paragraph 149(e) clearly states that this exception only relates to 'limited infilling in villages' rather than any nearby, residential clusters. Not only is there no policy support for the site being within the settlement boundary but my own observations indicate that it contributes to a clear visual break at the southern end of the village with what lies beyond. As such, the site cannot be considered to be in the village in either visual or policy terms. Consequently, this exception does not apply.
8. Turning to the matter of whether the appeal site is PDL, the appellants have described the history of the site and the parties agree that it was formerly part of the curtilage of Leylands Farm Cottage, as was the adjacent dwelling 'Foxdene'. The Council maintains that it has never been developed or used as a private residential garden for either Leylands Farm Cottage or 'Foxdene'. The appellants state that it has historically been used as a lawned area and vegetable garden for the cottage.
9. The definition of PDL in Annex 2 of the Framework excludes particular types of land from this definition which includes land in built-up areas, such as

residential gardens. The Courts have established that residential gardens which are not in 'built-up areas' are capable of falling within the general definition of PDL¹.

10. However, the appeal site and adjoining land occupied by 'Foxdene' was severed from the curtilage of Leylands Farm Cottage in 2007, at which point it ceased to have any ancillary role. Moreover, the appellant's offer no substantiated evidence of its former use and I note that this is not apparent from a series of aerial photographs, dating from 1990, that were included in the Case Officer's Report. Consequently, I find that paragraph 149(g) does not apply because its use as a garden has not been established to a satisfactory extent in the evidence that is before me.
11. Given the above, I conclude that the proposal would be inappropriate development and that no exceptions apply. It would, by definition, be harmful to the GB and should not be approved unless VSC apply.

Openness

12. Paragraph 137 of the Framework indicates that openness is an essential characteristic of the GB. It follows that openness is defined by an absence of buildings or other forms of development. As such, it is a characteristic quality of the countryside and a lack of visual prominence does not necessarily mitigate its loss.
13. I accept that screening would be provided by the established hedges and trees around the site and that the proposed development would not be highly visible in terms of wider landscape views. However, in the absence of a planning obligation to secure such screening or any additional landscaping, there would be nothing to stop the removal of boundary vegetation by future occupants or for it to be lost for other reasons. I also note that the access point onto the A227, as well as increased activity from the comings and goings of future occupants and visitors, would be clearly visible to road users.
14. Even though the site is not prominent in landscape terms, this does not alter the fact that new development on the site, where none was previously present, would cause harm to the GB through a resulting loss of an area that was previously devoid of any permanent structures. As such, the scheme would lead to urban sprawl and encroachment into the countryside, contrary to the purposes of the GB.
15. The appellants suggest that the proposal would have an equivalent effect on openness in comparison with outbuildings that could be constructed on the site without the benefit of a planning permission were it still part of Leyland Farm Cottage or 'Foxdene'.
16. I do not find this a valid fallback position as it has no realistic chance of implementation given that the appeal site is now a separate planning unit. Even if this were not the case, it would not alter my conclusions concerning the effects of the proposal on openness.

¹ Dartford BC v SSCLG [2017] EWCA Civ 141

Other Harm

Countryside Character

17. The Council maintains that the proposal would undermine one of the key landscape characteristics of Meopham Downs Character Area which is defined as a 'gently undulating topography with a mixture of arable and pasture farmland'. In contrast, the appellants maintain that site has never been used for agricultural purposes and is more in keeping with the character of the adjacent dwellings and the village rather than nearby farmland.
18. I observed that the site cannot currently be read as either arable or pasture land and that the proposal would not lead to the loss of any such area. Under these circumstances it is hard to see how this landscape characteristic would be eroded by the proposal. Whilst there would be no harm to this particular characteristic, this does not preclude harm to the surrounding countryside in a more general sense that would arise from the urbanisation of the appeal site.
19. Given that two sides of the site are bounded by open countryside, including farmland, the proposal would lead to encroachment and urban sprawl. As I have already noted, this harm would not necessarily be controlled through conditions capable of mitigating the erection of permanent structures in the longer term. Consequently, I find that the proposal would have an adverse effect on the general character of the countryside.
20. Given the above, I conclude that it would conflict with policies CS12 and CS19 of the Gravesham Local Plan Core Strategy 2019 (CS) which seek to ensure, among other things, that overall landscape character is conserved, restored and enhanced and that all new development integrates well with its surrounding local area. Considering the localised effect, I give this harm moderate weight.

Biodiversity

21. The third reason for refusal relates to potential impacts on wildlife, including reptiles, leading to a net loss of biodiversity. This arises from the opinion of the officer who undertook the site visit who observed 'dense trees, hedging and shrubbery covering the whole site'. It is unclear why an assumption concerning the presence of reptiles and the need for mitigation has been highlighted. No observation of any such species was noted by the case officer or in the consultation response from Kent County Council, which included a biological record search that would have identified any historic reptile records for the site.
22. Whilst there is no substantiated reason to assume the presence of reptiles (or any other protected species), this cannot be ruled out in the absence of an ecological report by a competent and appropriately accredited individual. The replacement of the extensive semi-natural vegetation with a dwelling, associated built infrastructure and an ornamental garden would not only affect protected species but also lead to a net loss of biodiversity. An ecological report would help to identify potential impacts and how net biodiversity gain would be achieved, as required by paragraph 174(d) of the Framework. It would also objectively establish the presence (or absence) of any protected species that may be present.

23. The appellants suggest that the appeal site offers little habitat for protected species and that an ecology report was being prepared to accompany their grounds of appeal. However, I have no such evidence before me and the appellants confirm that it was not submitted. Considering my own observations and established expertise in this area, there is considerable scope for a net biodiversity loss to occur as well as potential impacts on protected species.
24. Given the above, I conclude that insufficient information has been provided and that harm to protected species and a net biodiversity loss cannot be ruled out. This would be contrary to policy CS12 of the CS that seeks, among other things, to ensure that no net loss of biodiversity occurs in the Borough and that opportunities to enhance, restore, re-create and maintain habitats will be sought. It would also be inconsistent with the advice in paragraph 174(d) of the Framework for similar reasons. Bearing in mind the scope of potential impacts I give this harm moderate weight.

Other Considerations

25. The Council accepts that it is unable to demonstrate a 5-year housing land supply (HLS) and that the latest published housing land review concludes that it is only able to demonstrate a 3.27-year HLS. The appellants maintain that a net increase of 1 unit would offer a 'marginal but modest contribution' towards meeting the shortfall in local housing need. Paragraph 60 of the Framework emphasises the need to significantly boost the supply of homes and that windfall sites are important in the absence of a 5-year HLS. However, a single dwelling would not make a significant difference to the shortfall and this benefit only carries limited weight as a result.
26. The appellants maintain that the proposal would be in a sustainable location given the proximity of the village. Whilst I observed a number of local services, no evidence was presented to suggest that these were comprehensive or that additional services could be accessed via realistic, alternative means of transport. Consequently, there is nothing to suggest that future occupants would not be reliant on the use of private motor vehicles. I therefore find that this benefit only carries limited weight.

Very Special Circumstances

27. I have found that the appeal proposal represents inappropriate development in the GB, which is harmful by definition. It would also cause harm to openness and the two purposes of including the appeal site in the GB that I have identified. In accordance with paragraph 148 of the Framework, any harm to the GB must be given substantial weight which weighs significantly against the proposal.
28. In terms of other harms, my findings concerning the effect on countryside character and biodiversity lead me to conclude that moderate harm would result. In these respects, the proposal conflicts with relevant development plan policies, as set out above.
29. On the other hand, the appeal scheme would assist in addressing a housing supply shortfall but only to a negligible extent. As such, this only carries limited weight in favour of the proposal. The benefit of the location also only

attracts limited weight because a reliance on the use of private motor vehicles cannot be discounted.

30. Given the above, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the VSC necessary to justify the development do not exist.

Conclusion

31. The substantial weight to be given to GB harm is not clearly outweighed by other considerations sufficient to demonstrate VSC. Having considered all the matters in support of the proposal, I conclude that, collectively, they do not clearly outweigh the totality of harm.
32. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Roger Catchpole

INSPECTOR