



Appeal Decision

Site visit made on 6 June 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal Ref: APP/C3620/W/22/3306856

1 Boxhill Nurseries, Boxhill Road, Tadworth KT20 7JF

- 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 & Mrs Andrew & Loredana Hobbs against the decision of Mole Valley District Council.
- The application Ref MO/2022/0027/PLA, dated 4 January 2022, was refused by notice dated 2 August 2022.
- The development proposed is erection of a three bedroom residential bungalow on garden amenity land and erection of a garage to serve the existing dwelling.

Decision

1. The appeal is dismissed.

Main Issues

2. 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;
 - the effect of the proposal on the openness of the Green Belt; and
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development

3. The Framework establishes that the construction of new buildings within the Green Belt is inappropriate. There is a closed list of exceptions to this in paragraph 149 of the Framework, one of which relates to 'limited infilling in villages' (paragraph 149 e)).
4. In this regard, it is common ground between the main parties that the site, which consists of private amenity land and a garage associated with 1 Boxhill Nurseries (No 1) located in a predominantly residential area, is situated in a village. The main parties do not however agree on the matter of whether the proposal constitutes infilling.
5. There is no definition of infilling given in the Framework. It was held in *Wood*¹ that whether or not a proposed development constituted limited infilling in a

¹ *Julian Wood v SSCLG, Gravesham BC* [2014] EWHC 683 (Admin), [2015] EWCA Civ 195

village was a question of planning judgement for the Inspector and the Inspector's answer to that question would depend upon their assessment of the position on the ground.

6. Policies CS1 and CS2 of The Mole Valley Local Development Framework: Core Strategy (adopted 2009) (Core Strategy) relate to the Council's spatial strategy and housing provision and location respectively. A definition is given in the supporting text to Policy CS2 that, for the purpose of Policy CS2, 'infilling' is defined as the development of a small gap in an otherwise continuous built-up frontage.
7. The Core Strategy was adopted in 2009 however the relevant parts of paragraph 149 of the current version of the Framework relating to limited infilling in villages are identical to that found in the 2012 version of the Framework, meaning that the age of the Core Strategy is not a significant factor.
8. Additionally, paragraph 219 of the current version of the Framework provides that, amongst other things, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework, and whilst the supporting text to Policy CS2 referred to above goes further than that present in paragraph 149 e) of the Framework, its wording does not conflict with any specific paragraph of the Framework or the fundamental aim and purposes of Green Belt policy as set out in paragraphs 137 and 138 of the Framework.
9. Policy CS1 of the Core Strategy and the supporting text to Policy CS2 both refer to Planning Policy Guidance Note 2 but not in relation to matters which are directly relevant to this main issue. I note the appellants' analysis of the aspirations of the Council's policies with respect to meeting housing needs against the historical record, but this does not alter the relevance of the definition of infilling given in the supporting text to Policy CS2 to this main issue. Whether these policies are deemed to be out-of-date by virtue of paragraph 11 d) of the Framework is subject to the consideration of paragraph 11 d) i. of the Framework, which is a matter properly considered after the Green Belt balance has been undertaken, and to which I accordingly return to below.
10. Hence, whilst not determinative, I have had regard to the definition of infilling given in the supporting text of Policy CS2 merely as an aid to the practical application of planning judgement in my assessment of the proposal, for the purposes of this main issue.
11. The appellants have also drawn my attention to the definition given in the Planning Portal's online glossary ('development of a relatively small gap between existing buildings'), and to the Oxford English Dictionary which defines 'infill' as 'buildings constructed to occupy the space between existing structures', and to paragraph 8 of appeal decision Ref APP/C4235/W/18/3194600 in which the Inspector stated that infilling implies the development of a site that is between existing buildings. These definitions are as equally helpful as that provided by the supporting text to Policy CS2, and I note in particular that in *Braintree*² the Oxford English Dictionary was

² *Braintree DC v SSCLG & others* [2018] EWCA Civ 610

found to be authoritative with respect to the meaning of the word 'isolated' in the Framework.

12. A pattern emerges when considering all of the above-mentioned definitions, in that they all refer to the presence of existing elements of built form, between which there is a space / gap. The references to 'built-up', 'buildings', and 'structures', indicates that such built form is not of an insubstantial nature.
13. Whilst the site is flanked on one side by No 1, the dwelling known as Bedlam does not flank the site on the other side but rather is situated beyond fairly small outbuildings and a private amenity area to its rear. Indeed, I observed that Bedlam is set apart some way from the boundary with the site, rather than being close to the boundary and enclosing that part of the site by virtue of its built form. As such, although the site is adjacent to the plot comprising Bedlam, I consider that the dwelling known as Bedlam itself is not so closely situated in relation to the site that the proposed bungalow would reasonably appear on the ground as infilling the space between No 1 and Bedlam.
14. Moreover, the fact that Bedlam is orientated such that its principal elevation is facing Boxhill Road, rather than facing the long access way that extends from Boxhill Road which the principal elevation of No 1 faces, reinforces the visual separateness of that dwelling in relation to the site, as does the dense hedgerow which clearly separates the 2 plots. Furthermore, as 2 Boxhill Nurseries is not set directly in line with No 1 and is largely obscured from views near the site by hedging, No 1 rather has the appearance of being a stand-alone building in nearby views from the access way.
15. These factors in combination mean that, whether or not 'frontage' is interpreted as being synonymous with 'active frontage' (and noting the appellants' examples provided from Dorking in this respect), and taking account of the fence and the new garage proposed to be situated next to No 1, the proposed bungalow would appear more as an adjunct to No 1 rather than an infill development along a frontage which is continuously built-up, albeit as indicated above the definition given in the supporting text to Policy CS2 is only an interpretive aid in assessing this issue.
16. The fact that the proposal would not strictly constitute backland development as the site is not landlocked (in contrast to the true backland proposal considered in appeal decision Ref APP/C3620/1/20/3261485) would not change the proposed bungalow's physical relationship with the dwellings near to it, referred to above.
17. Taking all of the above into account, as a matter of fact and degree, and in assessing the issue in light of the position on the ground and the relevant case law, I consider that the proposal would not comprise infilling for the purposes of paragraph 149 e) of the Framework. The proposal therefore constitutes inappropriate development in the Green Belt for the purposes of the Framework. Inappropriate development is, by definition, harmful to the Green Belt.

Openness

18. The Framework denotes openness as an essential characteristic of the Green Belt. The openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it

follows that openness can be harmed even when development is not readily visible from the public realm.

19. As the proposal would involve the demolition of the existing garage on site and the construction of a new bungalow and a replacement garage, it would reduce the openness of the Green Belt in both spatial and visual terms. Due to the site's fairly secluded location adjacent to an access way connected to Boxhill Road, and considering that only one dwelling would be constructed, these impacts would be limited and localised, particularly in visual terms. Nevertheless, by the introduction of new elements of built form into a mostly open space, harm to the openness of the Green Belt would undoubtedly occur.

Other Considerations

20. The Framework makes it clear at paragraph 148 that substantial weight is given to any harm to the Green Belt. It establishes 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.
21. The Council currently has substantially less than the minimum 5-year housing land supply, as required by the Framework. The most recent Housing Delivery Test results indicate that issues with housing delivery have persisted for some time.
22. The new dwelling proposed, which would be located in an accessible and established residential area, would assist in addressing this shortfall, and would support the Government's objective of significantly boosting the supply of homes. In this regard, I am mindful that paragraph 69 of the Framework provides that, amongst other things, small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly, although as the proposal has been found on the first main issue to constitute inappropriate development in the Green Belt it is not a suitable site for which great weight applies with respect to paragraph 69 c) of the Framework.
23. The proposal would also add to the choice and mix of housing in the local area, in compliance with Policy CS3 of the Core Strategy, which particularly seeks the provision of 2 and 3 bedroom dwellings.
24. The future occupiers of the proposed dwelling would contribute towards the local economy, including to local services and facilities, and to the community life of the area, and the proposal would provide work for construction professionals and the construction industry in general.
25. The proposal incorporates measures to maintain and enhance biodiversity (which could be secured by planning conditions). However, although the site currently is mainly laid to hardstanding, given the small size of the site overall any net biodiversity gains would in all likelihood be limited.

Other Matters

26. It is common ground between the main parties that the proposal would not adversely affect the landscape or scenic beauty of the Surrey Hills Area of Outstanding Natural Beauty or the Area of Great Landscape Value, and this is

consistent with my observations. This is however a neutral matter, which does not weigh in favour of the proposal.

Balancing of Considerations

27. The proposal would be inappropriate development in the Green Belt and would result in a reduction in its openness. These matters carry substantial weight.
28. The proposal would offer a number of benefits, as summarised above. Nevertheless, given the minimal quantum of development involved and the consequent limited positive impacts in economic, social, and environmental terms, these benefits when considered collectively would amount to no more than moderate weight in favour of the proposal.
29. I therefore find that the other considerations in this case do not clearly outweigh the harm that I have identified, and that the very special circumstances necessary to justify the proposal do not exist. The proposal would not comply with the Green Belt aims of the Framework, and consequently would be unacceptable.
30. The lack of a 5-year supply of deliverable housing sites means that the policies which are most important for determining the appeal are deemed to be out-of-date in accordance with paragraph 11 d) of the Framework. However, paragraph 11 d) i. 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 proposed. As mentioned above, there would be harms to the Green Belt which would not be clearly outweighed. This provides a clear reason for refusing the proposed development. It follows that the proposal would not benefit from the presumption in favour of sustainable development, found at paragraph 11 of the Framework.
31. I have taken account of the Inspector's application of paragraph 11 d) of the Framework in appeal decision Ref APP/C3620/W/20/3261485. In that appeal decision the Inspector did not consider whether the proposal represented inappropriate development in the Green Belt, which is a key consideration in this appeal. That appeal decision is therefore not directly comparable with the proposal before me, and it does not change my findings as a result.

Conclusion

32. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR