



Appeal Decision

Site visit made on 11 July 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2023

Appeal Ref: APP/H2265/W/22/3313558

Heronshaw, Oldbury Lane, Ightham, Sevenoaks, Kent TN15 9DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Ian Grice against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/22/01376/OA, dated 22 June 2022, was refused by notice dated 24 August 2022.
 - The development proposed is demolition of existing structures and erection of a single dwelling and associated hardstanding, parking and landscaping via existing access from Oldbury Lane.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with all matters, apart from access, reserved for subsequent approval. Plans submitted with the application, which show a site layout and elevations, are for indicative purposes only. I have dealt with the appeal on that basis.
3. The appellant submitted an Arboricultural Report (AR) and an Ecological Impact Assessment (EcIA) with their appeal. The Council and other interested parties have had the opportunity to comment on this information, and their views have been taken into account in my decision.

Main Issues

4. The Council has referred in one of their reasons for refusal to the lack of information regarding the effect of the proposal upon trees. Its reason for refusal raises objections in terms of the effect of the proposal upon the character and appearance of the area, but only relates to ecology and biodiversity effects. The submitted AR has confirmed that subject to some minor felling, the trees on the appeal site can be retained. The Council in its statement raise no objection to the AR in principle, and I concur with this view. My decision has therefore focussed on the effects of the proposal on trees only insofar as they relate to ecology and biodiversity effects.
5. The appeal site is also located within the London Metropolitan Green Belt. Accordingly, the main issues with this appeal are:
 - whether the development 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 upon ecology and biodiversity, including protected species.

Reasons

Whether inappropriate development

6. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state 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 exceptions as set out in paragraph 149. Policy CP3 of the Tonbridge and Malling Borough Council, Local Development Framework - Core Strategy, adopted 25 September 2007 (CS) states that national green belt policy will be applied in areas such as the appeal site that are located west of the A228.
7. The appellant contends that the proposal meets exception e) of paragraph 149 of the Framework, relating to "limited infilling in villages".
8. The appeal site is mainly grazing land and is located between two existing dwellings; Heronshaw and Daisyfield. It has a relatively narrow frontage onto Oldbury Lane which connects to the A25. There is no dispute between the main parties that the proposal would constitute limited infilling due to it relating to one dwelling and with the appeal site being located between two existing houses. I also agree and I find the proposal would be limited infilling development. Nevertheless, the main parties dispute whether the appeal site can be considered to lie within a village.
9. The appeal site is outside the recognised settlement limits of Ightham; the appellant's Facilities Plan shows the development limits extend up to the opposite side of the A25, nearest to the junction to Oldbury Lane. However, there is no indication within the Framework that the term "limited infilling in villages" relates only to land that falls within a settlement boundary as defined in a development plan. In determining whether the site lies within a village it is also appropriate to consider the situation on the ground and whether it appears as part of Ightham.
10. I saw that Ightham has a central area on the opposite side of the A25, where most roads into the village lead towards. Sevenoaks Road is one of these roads and it runs up to the A25 with Oldbury Road broadly aligned and continuing on the opposite side of the A25. The built form on Sevenoaks Road, apart from having some small gaps and the A25 itself, continues onto Oldbury Lane. The broadly continuous pattern of houses and buildings along both Sevenoaks Road and Oldbury Lane, together with the connecting footpath over the A25, physically links the appeal site to the central area of Ightham.
11. Moreover, directly opposite the appeal site is Ightham Primary School, which is also located between properties that front onto Oldbury Lane. The appeal site's close proximity to the school indicates the appeal site is also functionally related to the village.
12. Although there are some gaps between buildings on Oldbury Road and Sevenoaks Road, there are also breaks between buildings on many of the other roads leading into the centre of the village. As such, these spaces between

buildings, are representative of the village's built form, and do not indicate that the appeal site is beyond the extent of the village. As such, I find the appeal site is also visually related to the village.

13. The Council has referred to two appeal decisions, which it is argued support its conclusion that the proposal would not be limited infill development in a village. These examples are at West Malling and Addington, both are within Tonbridge and Malling Borough Council area. The West Malling decision relates to a gap on a small cluster of buildings, but otherwise surrounded by countryside, the site was also previously developed land. The Addington decision dismissed permission for 5 dwellings on a field within the countryside and in an area that lacked nearby services, the site was seen as separate from the village with no physical, functional or visual relationship with the village. The circumstances on these examples are different to the appeal proposal which would sit side-by-side with existing residential development and is physically, functionally and visually related to the village. I therefore do not find these examples to be comparable to this appeal proposal and so they do not alter my conclusions on this issue.
14. I therefore conclude that the proposal would be limited infilling within a village and so in accordance with exception e) of paragraph 149 of the Framework. Therefore, I conclude the proposal would not be inappropriate development in the Green Belt and so it would accord with the provisions of the Framework on Green Belt and CS policy CS3.
15. As I have found the proposal would not be inappropriate development, it is not necessary for me to consider the effect of the proposal upon the openness of the Green Belt or whether very special circumstances exist in this case.

Ecology and Biodiversity

16. The appeal site is a mainly grassed paddock containing several trees, including some groups of trees near to Oldbury Road, along with a stables building (B1).
17. Although the EcIA did not find the presence of protected species at the appeal site, it does recommend that further bat surveys, referred to as 'emergence and re-entry surveys' are undertaken at the appropriate time of year to establish the presence of any bats in B1. Notably, the EcIA refers to gaps in the bitumen felt of the roof structure that could provide nesting opportunities for crevice roosting bats.
18. I am not aware that the additional bat surveys have been undertaken and I note the appellant has suggested that they can be conditioned. However, Paragraph 99 of Circular 06/2005 is clear that a precautionary approach should be taken in respect of protected species, and surveys should be undertaken prior to the grant of planning permission, to take full account of the presence of protected species, which are an important material planning consideration.
19. Whilst the other enhancements and mitigations recommended by the EcIA could be conditioned, it would be unreasonable to condition the further bat survey as this information is required from the outset to make an informed decision, consistent with the clear stated guidance in paragraph 99 of Circular 06/2005. Without the recommended surveys being carried out, I am unable to determine whether the proposed mitigation measures would adequately safeguard or compensate for any harm caused to bats by the proposal.

20. I therefore conclude that there is insufficient information to fully assess the effects of the proposed development upon protected species, contrary to Policy NE3 of Tonbridge and Malling Borough Council's Managing Development and the Environment, Development Plan Document, (Part of the Local Development Framework), adopted April 2010. This seeks to avoid development that would adversely affect biodiversity and wildlife habitats without appropriate mitigation.

Other Matters

21. The appeal site is located within the Oldbury Conservation Area (the CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires when determining proposals in conservation areas that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
22. The CA contains a mixture of properties, many having a frontage onto the road, but set back from it, and within spacious plots. This part of Oldbury Lane near to the appeal site contains mainly detached houses with heavily planted frontages. The CA extends across a small part of the appeal site, nearest to Oldbury Road, which contains trees to either side of the appeal site's existing access. The Tree Survey has shown that the majority of those trees can be retained ensuring the planted frontage of the appeal site would be maintained and the access can be provided to serve a dwelling. Consequently, I find that the proposed access would have a neutral effect upon the CA, so its character and appearance would be preserved, consistent with the legal duty.
23. The indicative layout shows how a dwelling could be located further into the plot between the properties to either side. I am confident that a dwelling can be built that would be of an appropriate siting, scale and design for this area, and preserve the character and appearance of the CA, consistent with the duty in the Act.
24. The appeal site is located within the Kent Downs Area of Outstanding Natural Beauty (AONB), I have assessed the scheme with regard to the statutory duty contained in Section 85(1) of the Countryside and Rights of Way Act 2000 (CROW Act), requiring regard to be had to conserving and enhancing the natural beauty of the AONB. This duty is also reflected in paragraph 176 of the Framework that states great weight should be given to conserving and enhancing landscape and scenic beauty of the AONB, and that the scale and extent of development should be limited. Given that the proposal relates to one dwelling located between two existing properties, such a proposal can be considered to be limited in its scale and extent. The substantial planting around and near to the appeal site's boundaries, together with its close association with the existing built form, would also ensure a dwelling could be accommodated that would not be particularly conspicuous in the AONB. I am of the opinion that a suitably designed dwelling could be accommodated on the site that would ensure the special scenic qualities of the AONB would be conserved, consistent with S85(1) of the CROW Act.
25. The appellant has made me aware of a pre-application enquiry to the Council regarding the possibility of obtaining planning permission for two dwellings at the appeal site, and of their concerns regarding how the Council handled their subsequent planning application, including not seeking additional information.

However, these are largely matters between the relevant parties and beyond my consideration of the planning merits of the appeal proposal.

26. I note that no objections have been raised by the Council in respect of highway safety; whether the site is a sustainable location; drainage and utilities; and that there would be no unacceptable effects upon trees. I regard these as neutral matters in my decision, which would in any event be required to comply with other policies of the development plan.
27. I acknowledge that the appeal site could accommodate a well-design dwelling in its generously sized plot, which is well spaced from existing properties; that it could feature high quality external materials; that a dwelling could be designed that would not adversely effect neighbouring occupier's living conditions; that it could be in keeping with the scale and appearance of the area; and that a dwelling could benefit from the screening provided by the existing planting on its front boundary. Acceptability in these regards is a neutral factor in my assessment.

Planning Balance

28. The Council have advised that they do not have a 5-year supply of housing, and so paragraph 11 d of the Framework applies.
29. As I have found no conflict with the effect of the proposed development upon the Green Belt, there are no relevant Framework policies which provide a 'clear reason for refusal' within the terms of Framework Paragraph 11d(i) and footnote 7. Paragraph 11 d) ii. of the Framework is engaged and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. My conclusion above found that insufficient evidence has been provided to enable a proper assessment of the effect of the proposed development on bats. Consequently, it has not been demonstrated that the proposal would avoid an adverse impact on a protected species. The scheme would therefore conflict with Paragraphs 174 and 180(a) of the Framework, which states that development should contribute to and enhance the natural and local environment and planning permission should be refused where significant harm to biodiversity cannot be avoided. I attach substantial weight to this conflict, in view of the legal protection afforded to protected species.
31. I acknowledge an additional dwelling which would contribute towards Government's plan to significantly boost the supply of housing, although, given that this would relate to one dwelling, the contribution towards the Council's overall supply of housing would be limited. I also note that there would be economic benefits associated with its construction, which could be by a SME or through a self-build arrangement. Again however, these benefits are likely to be small given the scale of the proposed development. There would also be social benefits through the contribution future occupiers make to local community groups. Given the relatively small scale of the development, these benefits are of limited weight.
32. Therefore, I find the benefits of the scheme would be significantly and demonstrably outweighed by the adverse impacts of the development.

Conclusion

33. The proposal would be contrary to the development plan and the Framework, and there are no other considerations that indicate a decision other than in accordance with them. Accordingly, the appeal is dismissed.

A Hunter

INSPECTOR