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# 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: 8 September 2023**

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**Appeal Ref: APP/H2265/W/23/3314272**

**Land Northeast of Stable Villa, Maidstone Road, Wrotham Heath,  
Sevenoaks, Kent, TN15 7SW**

- 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 L Cottrell against the decision of Tonbridge and Malling Borough Council.
  - The application Ref TM/22/00790/FL, dated 5 April 2022, was refused by notice dated 19 October 2022.
  - The development proposed is described as 'Erection of purpose built, disabled access, single family dwelling house with detached garage'.
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## Decision

1. The appeal is dismissed.

## Background and Main Issues

2. The appeal site is located within the London Metropolitan Green Belt, and Policy CP3 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy (September 2007) (CS) states that national green belt policy should be applied in such areas. The main parties do not dispute that the proposal constitutes inappropriate development in the Green Belt as it does not accord with any of the exceptions<sup>1</sup> listed within the National Planning Policy Framework (the Framework) and that the proposal would harm the openness of the Green Belt. I see no reason to disagree with these views, and paragraph 147 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Furthermore paragraph 148 of the Framework states that substantial weight is given to any harm to the Green Belt.
3. Taking into account the above, the main issue is whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

## Reasons

4. A fundamental aim of Green Belt policy, as set out in paragraph 137 of the Framework, is to keep land permanently open. Openness is an essential characteristic of the Green Belt that has spatial as well as visual aspects.
5. In spatial terms the proposal would introduce a new large dwelling, garage building, a long new access road, and an array of solar panels said to measure

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<sup>1</sup> Paragraphs 149 and 150 of the Framework

20 metres in length, all which would have a significant effect upon the existing open and undeveloped appeal site. The footprints of the dwelling and garage building are also substantially larger than other nearby dwellings, and there is insufficient justification provided as to why such large buildings are necessary. Furthermore, both of the buildings are to be two-storey in scale, which combined with their excessive volumes and their locations on rising land levels would make them highly conspicuous on the appeal site and also harmful to openness in visual terms. As such, I attach significant weight to the identified harm to the openness of the Green Belt.

6. I acknowledge that the Council does not raise concerns with any other matters other than the Green Belt harm and I have no reason to disagree with this.

*Other considerations*

7. Paragraph 148 of the Framework states 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.
8. The appellants assert that there are very special circumstances to justify the proposed dwelling. The basis of their assertions are that a disabled access dwelling is required due to; their personal circumstances relating to their ill health; their family's long association with the land upon which it is to be sited; along with the health condition of their adult son, and his partner. The appellants have expressed a desire to live together in the proposed dwelling.
9. I understand that the appellant's adult son currently resides with his partner elsewhere in the Medway area, whilst the appellants reside at Stable Villa, a 4 bedroomed detached dwelling that is situated opposite the appeal site. A wealth of supporting and background information has been submitted to substantiate the appellant's case, including medical information for the appellants and for their son, along with information from their son's care worker, from the Kent police and employment information, as well as supporting letters from nearby occupiers and their families. It is also noted that a care package for all intended occupants of the proposed dwelling could be provided. I have had full regard to this information in my decision.
10. One of the appellants has lived in the immediate area since the 1940's and it is clear from the submission that he and his family have a strong association and emotional connection with the land at the appeal site and the wooded area adjoining it. Their son is also said to enjoy visiting and working on the land where he grew up.
11. Having read the supporting documents, I have much sympathy with the family's situation and their collective health issues. I am also guided by Planning Practice Guidance, which advises that when personal circumstances are raised, the courts have generally taken the view that planning is concerned with land use in the public interest<sup>2</sup>.
12. I acknowledge that the appellants wish to live with their adult son and his partner together in a purposefully designed disabled access dwelling where they can all receive the care and support, that they collectively require. The

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<sup>2</sup> Paragraph: 008 Reference ID: 21b-008-20140306

evidence before me indicates that they do not currently live together. However, I am not persuaded that it is necessary or essential that they all collectively live together. Notwithstanding this, I have assessed the appellants other stated reasons why they require the proposed dwelling below.

13. I acknowledge that living in familiar surroundings near to extended family could be of benefit to the appellant's son, but the evidence provided appears to indicate that he is currently living elsewhere in Kent away from Wrotham Heath, and it is unclear whether he has lived in the Wrotham Heath area in the very recent past. In addition, it is clear from the submission that he is receiving the required care and his situation is said to have improved more recently. Whilst it may be beneficial for the appellant's son, insufficient evidence has been provided to substantiate why it is necessary and essential for he and his partner to live at the appeal site in order to demonstrate very special circumstances for inappropriate development in the Green Belt.
14. One of the appellants long connection to the land is acknowledged, and clearly after living somewhere for so long, there could be a heightened anxiety about the prospect of living elsewhere. However, with there being no evidence of a functional need to live on the site, it has not been demonstrated that this is anything more than a desire to live on the appeal site. I note that maintaining the wooded area and working on the land can benefit the appellant and his family's health and well-being. However, I am not persuaded that it is necessary to live on the appeal site to maintain the family's connection to the land and undertake associated maintenance work to it. Consequently, I do not find the connection to the land as justification for the proposed dwelling.
15. The appellants have suggested that the costs of adapting their existing dwelling at Stable Villa (£250k-£300k) for them all, is not a good investment in terms of how it would affect the overall value of the property. Whether that is so and even if I accepted that they all need to live together, there is a lack of evidence before me that the adaptations are unaffordable for the appellants compared to the cost of a sizeable new dwelling, given that there is no financial or viability assessment before me. Nor does there appear to have been any serious consideration of a replacement fully accessible dwelling at Stable Villa.
16. The appellants have suggested that by allowing the proposed development, it would allow their son's care to be privately funded in perpetuity, through the sale of Stable Villa. However, this claim is unsubstantiated and there is no mechanism to secure this, therefore it has little relevance to the appeal proposal before me.
17. In light of the above assessment, and for completeness, I have also assessed the reasons relating to the appellants particular health needs for the proposed dwelling. The health problems of the appellants would not on their own justify the proposal, particularly considering they reside in the adjoining property, Stable Villa.
18. I therefore find that whilst it is desirable for the appellants to develop the site and provide a suitable accessible home for themselves and their son and his partner, I cannot conclude on the evidence before me it is essential or necessary, or that there are no other possible alternatives to the appeal proposal. The benefits set out by the appellants are private and not public benefits and because other suitable alternatives could exist (in redeveloping the existing house at Stable Villa), I attach limited weight to them.

19. Based on the information before me, the appellants, their son and his partner all have protected characteristics regarding their respective physical and mental disabilities. In light of this, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had due regard to the Human Rights Act 1998 (HRA) which at Article 8, requires that decisions ensure respect for private and family life, and the home, Article 8 is also engaged in this case. In reaching my decision, I have kept these interests at the forefront of my mind. However, they are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key.
20. I recognise the paramount importance of the appellants' rights to have their home and private and family life respected and this is a primary consideration. Any adverse effects would weigh against the proposal in these respects.
21. Notwithstanding this, for the reasons outlined above, I have found that it has not been shown to be necessary for them individually or collectively to live at the appeal site, and that there is insufficient justification as to why Stable Villa cannot be adapted accordingly to suit the appellants and their son and partner's needs, and allow them to retain the link to their land.
22. Having regard to the legitimate and well-established planning policy aims in respect of protecting the Green Belt and the substantial weight given to it by the Framework, the dismissal of this appeal would be proportionate and necessary and dismissing this appeal would not unacceptably violate the appellants, nor their family's rights under the HRA and would be consistent with the PSED duty contained in Section 149 of the Equality Act 2010.

### **Other Matters**

23. The appellants have referred to the 2014 Tonbridge & Malling Strategic Housing Market Assessment, (SHMA) which indicates a shortage of disabled access dwellings in the area. Whether this is still so, based on the evidence before me, this would not outweigh the harm to the Green Belt.
24. An earlier application for the proposed dwelling was refused planning permission and I acknowledge the submission before me has been made with additional justification to support their case for very special circumstances. I also note the appellants' comments that there has been little engagement from the Council, other than for extensions of time. However, these are neutral points that do not weigh in favour or against the proposal.
25. Reference is made by the appellants to a previous proposal for Wrotham Heath Garden City, a proposed development said to be for up to 4,000 homes in the Green Belt nearby. Be that as it may, that is not relevant to this proposal and does not have any bearing on this appeal.
26. The appellants state they are proposing a high-quality disabled access dwelling along with a photovoltaic cell array and battery storage at the site. These are a positive aspect of the scheme, but they do not outweigh the harm to the Green Belt.

27. The positive community contribution said to be made by the appellants and the fact that the appeal site is not in a Conservation Area or near to listed buildings, are neutral matters that do not have a bearing on my decision.
28. Reference has been made to the *South Bucks District Council and another (Respondents) v. Porter (FC) Appellant [2004]* case in support of the appeal. That case related to a person of Romany descent, and the considerations were much different to this appeal proposal. I did not therefore find that case to be a comparable situation with this appeal, although I have fully taken the appellants personal circumstances into account in my decision.
29. The appellants have stated that the proposal would mean Stable Villa and their son's existing property in the Medway area would be available for other occupiers, increasing the availability of housing. Whilst that maybe the case, that contribution to the overall supply of housing would be very small. I therefore attach very limited weight to that argument.
30. I acknowledge that the proposal would see some sheds, minor structures and a caravan removed from the site, and this would be of benefit to its appearance, but this also attracts very limited weight in my consideration, given that the proposed dwelling new dwelling would be much larger than the structures which it replaces.
31. The Council has advised that it is unable to demonstrate a five-year supply of deliverable housing sites. However, the 'tilted balance' embodied in paragraph 11d) ii of the Framework does not apply in this instance, because the Green Belt status of the site as set out in footnote 7 provides a clear reason for refusing the development proposed.

### **The Green Belt Balance and Conclusion**

32. Paragraph 147 of the Framework makes it clear that inappropriate development is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances. There is no dispute that the proposal would be inappropriate development and would therefore, by definition, be harmful to the Green Belt. I have also found that it would cause significant harm to the openness of the Green Belt. These are matters to which I give substantial weight as required by paragraph 148 of the Framework.
33. The proposal would allow four adults to live together and receive their current or future care needs together in a purposefully designed dwelling, on land that has a close and long association with the family and assist with the health and wellbeing of the appellants and their adult son, by being in familiar surroundings. Whilst it may be beneficial for their health and wellbeing for them all to live together collectively it not been shown to be necessary or essential for them all to live together at the appeal site. As such, and mindful that this is a private benefit and not in the public interest, I attribute limited weight to it.
34. The proposal would also make a contribution to the supply of housing, particularly with it being a purposefully designed disabled access dwelling, in the area at a time when the Council has a significant shortfall in housing supply, and allow Stable Villa and a property in the Medway area to be available for other occupiers. However, given that this would only boost supply

by one dwelling and release two existing properties for occupation by others, the benefit of this would also be limited.

35. The removal of the existing structures from the appeal site is noted, but these are largely hidden from public view, and the benefits from this are very limited. The other arguments put forward by the appellants in support of their appeal, which I have referred to in my decision above, have not raised any significant public benefits which would outweigh the harm to GB that I have found.
36. In summary, the proposal would be inappropriate development in the Green Belt in the terms set out by the Framework and would result in a harmful loss of openness to the Green Belt. The Framework requires that substantial weight should be given to any harm to the Green Belt. The harm to the Green Belt would not be clearly outweighed by the other considerations. Therefore, the very special circumstances required to justify a grant of planning permission have not been demonstrated.
37. The proposal conflicts with the development plan taken as a whole and national policy set out in the Framework to protect the Green Belt. There are no other considerations that outweigh that conflict and for this reason the appeal is dismissed.

*A Hunter*

INSPECTOR