



Appeal Decision

Site visit made on 14 November 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Ref: APP/G2245/W/23/3321902

Manor Farm, Dryhill Lane, Sundridge, Kent TN14 6AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Ken Clarke against Sevenoaks District Council.
 - The application Ref 22/03134/FUL, is dated 10 November 2022.
 - The development proposed is the conversion of redundant agricultural buildings into three detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. The address in the banner heading above has been taken from the application form, albeit that the reference to Kent has been made after Sundridge rather than preceding as shown on the application form.
3. On 22 November 2023, all designated Areas of Outstanding Natural Beauty (AONBs) in England and Wales became "National Landscapes". AONBs have been renamed and rebranded as National Landscapes to reflect *"their national importance: the vital contribution they make to protect the nation from the threats of climate change, nature depletion and the wellbeing crisis, whilst also creating greater understanding and awareness for the work that they do"*. As such, all references in this decision to the Kent Downs AONB shall now be referred to as the Kent Downs National Landscape.
4. As the Council failed to determine the scheme within the statutory timeframe, it falls to me to determine the scheme based on the evidence before me. I note the Council's putative reasons for refusal, however I consider that there are other matters that would form the main issues of this appeal, and I have requested that both parties provide further comments on these.
5. As such, the main issues are as follows:
 - 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 and the effect on openness;
 - The effect of the proposed development on the living conditions of Manor Farm, in respect of privacy and whether the proposed development would provide acceptable living conditions for potential occupiers;
 - whether the development would be at risk from flooding and the effect of the development on water quality;

- The effect of the development on the character and appearance of the National Landscape; Ecology and Biodiversity; Access arrangements; and
- Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances to justify it.

Reasons

Whether inappropriate development

6. The appeal site comprises of several agricultural structures at Manor Farm, located in open countryside designated as Green Belt and National Landscape. The dwellinghouse at Manor Farm adjoins the site to the west, with further residential development located to the east of the site, which is situated at the end of the narrow rural road of Dryhill Lane. The proposal would convert three of the former agricultural structures that have fallen into disrepair into three detached dwellinghouses, while the other agricultural buildings would continue to be used for agricultural functions.
7. The Framework establishes at paragraph 150 that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. This includes at paragraph 150 d) the re-use of buildings provided that the buildings are of permanent and substantial construction.
8. Policy GB7 of the Sevenoaks District Council Allocations and Development Management Plan (DMP), adopted February 2015, also considers the re-use of buildings in the Green Belt can be an exception, providing that they will not have a materially greater impact on the openness than the present use, and are of permanent and substantial construction. This is generally consistent with the Framework.
9. The second limb of DMP Policy GB7 highlights that detailed structural surveys and method statements are required to ensure that the buildings are of permanent and substantial construction and are '*capable of conversion without major or complete re-construction that would detract from their original character*'. I have been presented with conflicting structural reports¹ in respect to the existing buildings and whether they are capable of conversion for re-use as dwellinghouses.
10. Despite conflicting conclusions, there is no dispute that the buildings are permanent nor that they are in poor condition. The appellants structural report highlights that various works are required to repair elements that have been damaged and elements that need replacement in order for the re-use of the structures to occur.
11. Whilst external brick walls are present to all elevations on each building, many of the elevations are distorted, with damage to the external cladding and signs

¹ Structural Survey Report prepared by CTP Consulting Engineers dated 10/11/2022 Ref: A5466 and letter dated 04/12/2022 from Duncan Anderson Associates Consulting Structural Engineers.

of water ingress. Some walls are reported to lean, along with evidence of cracking. Indeed, during my site observations, I noted that Building C had no roof and Building A appears to be substantially supported by scaffolding and structural props. From the information before me and from my site observations, it appears that significant elements will need to be replaced and/or rebuilt. Therefore, in adopting a precautionary approach I cannot conclude that the existing buildings are of substantial construction, such as to be considered under paragraph 150 d of the Framework.

12. The Framework states that *'the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.'* It has been established that openness has both a spatial and visual aspect.
13. The proposed conversion would largely occupy the same footprint as the current buildings, albeit a small portion of Building C would be removed and there would be a slight increase in the height of the building. The buildings occupy an area amongst other existing buildings, and the existing vegetation surrounding the site would be retained, providing an element of screening from longer views. Even acknowledging the potential for a residential curtilage and residential paraphernalia, overall the proposal would preserve both aspects of openness of the Green Belt and would not conflict with the purposes of including land within it.
14. Nevertheless, whilst I have found that the proposal would not harm the openness of the Green Belt, for the reasons above the proposal would not constitute the re-use of buildings of substantial construction and as a result, the proposal does not benefit from the exception set out in paragraph 150 d) of the Framework and would be inappropriate development, which is, by definition, harmful to the Green Belt. The proposal also conflicts with DMP Policy GB7 insofar that the proposed re-construction would detract from their original character.

Living conditions

15. In respect to the existing amenity of nearby residents, the property most likely to be affected is the Manor Farm dwellinghouse. Building C has two windows at the ground floor level adjoining this site. The angle between these properties and provision of established boundary vegetation would provide an effective screen between these properties, limiting any overlooking and loss of privacy to oblique views only. In respect to the upper floor windows at Buildings A and B, the plans indicate that Building B will incorporate a louvered shutter limiting any views southwards and away from Manor Farm. A similar arrangement or obscured glazing could be attached to the upper floor window of Building A, which could be secured through a condition.
16. In respect to the living conditions of potential occupiers of the development itself, Buildings A and C are located in close proximity to one another, with the approximate distance of the rear of Building C only 4m from the front elevation of Building A. The window at the rear of Building C serves a shower room and could be obscured glazed and fixed shut to prevent loss of privacy, however the space between these properties is extremely limited and tight. Consequently, the proximity, height and mass of Building C would have a significant impact on the outlook from Building A by enclosing views. The design of Building C would lead to a stark elevation in close proximity to the

main elevation of Building A providing an oppressive presence and poor outlook, to the detriment of any future occupiers living conditions.

17. The plans before me indicate that Buildings B and C would be provided with modest external private open space to the front and flank elevations of these dwellings. Having regard to the size of the properties, which could be used by families, the modest private areas could accommodate tables and chairs, but there would be little additional room for children to play or for potential occupiers to store equipment.
18. With regard to Building A, it is indicated as a four-bedroom unit, but other than a very limited planting area to the front alongside a proposed parking space, no usable private amenity area has been supplied. Furthermore, all amenity space would be located amongst the proposed access route and car parking areas and would provide an unsuitable and unattractive amenity area for potential occupants. Therefore, I do not consider the accommodation provided by Building A, B and C accords with DMP Policies EN1 and EN2 and could not reasonably be regarded as a high-quality living environment.
19. Overall, the limited separation between Buildings A and C, combined with the inadequate amenity space for potential occupiers, would mean the proposal would be contrary to DMP Policies EN1 and EN2 and paragraph 130 of the Framework which, amongst other matters, seek to ensure that new developments protect the living conditions of future occupiers and occupiers of neighbouring dwellings and expects new developments to secure a high standard of amenity for existing and future users.

Flooding and Drainage

20. Paragraph 162 of the Framework sets out that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Paragraph 168 of the Framework is also clear that applications for some minor development and changes of use should not be subject to the sequential or exception tests. Nevertheless, these applications should still meet the requirements for site-specific flood risk assessments (FRA) set out in footnote 55.
21. The appeal site is located in Flood Zone 3 which is at a higher probability of flooding². The proposal is for a change of use from agricultural use to residential development, which is 'more vulnerable' to the effects of flooding³ and would require the submission of a site specific FRA. However, a sequential test would not be applicable here.
22. Paragraph 167 of the Framework states that development should only be allowed in areas at risk of flooding where, in light of a site-specific FRA (and the sequential and exception tests, as applicable) it can be demonstrated that the development meets a number of criteria. These include ensuring that the development is appropriately flood resistant and resilient, incorporates sustainable urban drainage (SuDS), safely manages any residual risk, and provides safe access and escape routes.

² Planning Practice Guidance, Paragraph: 078 Reference ID: 7-078-20220825

³ Framework Annex 3: Flood risk vulnerability classification

23. The appellants submitted FRA⁴ indicates that the site has a high risk of fluvial and ground water flooding and moderate risk from surface water flooding, indeed from the information before me there is evidence highlighting localised flooding. It is acknowledged that the proposal would be compliant with the requirements of paragraph 167 of the Framework insofar as it ensures the most vulnerable development is adequately flood resistant and resilient.
24. The FRA further highlights that (as shown on the submitted plans), SuDS would be appropriate through the provision of an attenuation tank for all surface water including during 1 in 100 year storm events. The water would be discharged back into an existing stream via a pump at a rate of 2l/s as it would be impractical to match greenfield run-off rates. In terms of drainage, a foul water treatment plant would be installed to clean water before being discharged into the stream away from the existing and proposed residential properties using the same pumping system.
25. The appeal site is also located within a Source Protection Zone 1 (SPZ1), where the Council has a statutory duty to ensure that private water supplies remain wholesome and safe. Concerns have been raised by the Councils Environmental Health Officer (EHO) in respect to the treated water entering a watercourse that does not contain water throughout the year. Given that the area is in SPZ1 the EHO indicates that a permit from the Environment Agency (EA) would be required and is concerned the discharge would compromise the quality and safety of a nearby private water supply. The EHO considers that there is insufficient information to assess the impact of the proposal on the private water supply. Thus, in terms of managing residual risk the proposal would not meet this requirement.
26. From the information before me there is only limited evidence in respect to whether the required permit could be obtained from the EA and in the absence of further evidence, I cannot be confident that any potential impact to the private water supply can be adequately mitigated. I have given careful consideration as to whether these concerns can be effectively addressed by condition in a manner that would ensure that the private water supply is safeguarded. However, without sufficient evidence providing assurance the requisite EA permit can be obtained, I must adopt a precautionary approach.
27. I therefore conclude that I have insufficient evidence to ensure that the proposal would not have an unacceptable effect on the quality of the private water supply. In this respect it would fail to comply with paragraph 183 of the Framework, insofar as it seeks sites that are suitable for their proposed use, taking account of any risks arising from contamination.

Effect on National Landscape

28. The appeal site is located within the Kent Downs National Landscape which exhibits an open rural character. Policy EN5 of the DMP is consistent with paragraph 176 of the Framework, in that it requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Landscapes which have the highest status of protection in relation to these issues.
29. Whilst located within Kent Downs National Landscape and visible from several public vantage points in the locality, the appeal site is nevertheless very

⁴ Flood Risk Assessment and Drainage Strategy by CTP Consulting Engineers dated 30/06/2021 Ref: A5466

insular, located amongst existing residential and agricultural buildings. Being bounded by built development and structures provides a more developed feel to the site. Given that the proposal is viewed in the context of these residential properties and the existing agricultural units, notwithstanding my concerns in respect to its substantial construction, the re-use of the buildings in this case would not harm the visual qualities and essential characteristics of the National Landscape in terms of its landscape and scenic beauty.

30. Interested parties have raised concerns in respect to the light spillage from the proposal, on the dark skies in the locality. I appreciate that dark skies are a factor that contribute to the natural beauty and special qualities of the National Landscape. However, given the location amongst the existing agricultural and residential buildings, any modest additional light spillage caused by the proposed development would neither be significant nor have an unacceptable effect on dark skies.
31. Overall, any adverse effects of the development would be seen within the context of the existing development of which the appeal site forms part. As such, the proposal would at the very least conserve the landscape and natural scenic beauty; visual qualities and essential characteristics of the National Landscape. Consequently, the scheme is in accordance with DMP Policy EN5 and the aims and objectives of paragraph 176 of the Framework which seek to protect and enhance valued landscapes.

Ecology and Biodiversity

32. Paragraph 99 of Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
33. Paragraph 180 of the Framework advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Policy SP11 of the Sevenoaks District Council Core Strategy (CS), adopted February 2011 also states that the biodiversity of the district will be conserved, and opportunities sought for enhancements to ensure no net loss of biodiversity.
34. The appellant has provided Ecological Reports⁵ which advised no impacts to protected species are foreseen. Nevertheless, the reports recommend as a precautionary measure that the works be undertaken as detailed in a method statement, and that works should be carried out under the supervision of a licenced ecologist. Natural England and the Kent County Council Ecological Advice Service consider that subject to suitable conditions the proposed development would not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.

⁵ Preliminary Ecological Appraisal prepared by Sevenoaks Environmental Consultancy Ref: 3629 20 03 19 Rpt 01 Rev B MB MJ and the Updated Preliminary Roost Assessment (PRA) prepared by Cherryfield Ecology dated 29/11/2022

35. Subject to suitably worded conditions being imposed, I am content that a scheme could be devised that would avoid or adequately mitigate against significant harm to ecological assets. On this basis, I do not find conflict arises with CS Policy SP11 nor paragraph 180 of the Framework.

Access arrangements

36. It is acknowledged that the Council did not put forward any reason for refusal on the grounds of highway safety or access to the site. Nevertheless, interested parties have expressed concerns about the impact of the proposal on the narrow accessway to the site and lack of passing points, which would be used more intensively as a result of the development. I have been presented with little information in respect to the existing and expected trip generation rates from the proposed development, although given the scale of development proposed, these are likely to be low.
37. During my site observations, I noted the rural nature and narrow access route along Dryhill Lane coupled with the poor driving surface and lack of passing points. However, given the existing conditions and low density of development the area would remain relatively lightly trafficked, with vehicles moving at low speeds. As such, I do not consider that the proposed development would cause any harm to highway safety or lead to an unacceptable impact on the existing access. The County Highway Authority have raised no objection, however given the private nature of Dryhill Lane it is outside their jurisdiction. Nevertheless, suitable conditions could be imposed to ensure that measures are provided to confirm the access remains safe to use.
38. The proposal would therefore accord with Paragraph 111 of the Framework which states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

Very special circumstances

39. It is common ground that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. The Framework states that where the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites, the presumption in favour of sustainable development is engaged whereby planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
40. However, footnote 7 of Paragraph 11 of the Framework states that the tilted balance is not engaged where policies in the Framework, that protect areas or assets of particular importance, provide a clear reason for refusing the development proposed. Footnote 7 sets out that these policies include those relating to land designated as Green Belt.
41. Given my findings in relation to the Green Belt there is a clear reason for refusing the development proposed, and I am not required to apply the tilted balance in this respect, albeit that the delivery of housing when there is evidence of under delivery is a benefit to which I have given moderate weight.
42. The proposal would also result in some small social and economic benefits, including the support future occupiers would give to local businesses and

services. The proposal also benefits from sufficiently sized units. To these benefits I apportion modest weight given the limited scale and nature of the proposed development. However, these benefits would not outweigh the harm that I have identified above.

Conclusion

43. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. I have also concluded that the appeal scheme would result in harm to the living conditions of potential occupiers and there is insufficient information to ensure a private water supply is safeguarded. Paragraph 148 of the Framework states that in considering a planning application substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
44. As explained above I give moderate and modest weight to the other material considerations cited in support of the proposal. However, I conclude these circumstances do not clearly outweigh the harm the scheme would cause. Consequently, very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist. The proposal is therefore in conflict with the Framework and DMP Policies EN1, EN2 and EN5.
45. The proposal would therefore conflict with the development plan and there are no other considerations that outweigh this conflict. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR