



Appeal Decision

Site visit made on 20 November 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2024

Appeal Ref: APP/H2265/W/23/3316175

Grove Farm, Maidstone Road, Hadlow, Tonbridge, Kent TN11 0JL

- 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 Hiscocks of Magnum Partnership (Brenchley) Limited against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/22/01691/FL, dated 28 July 2022, was refused by notice dated 31 January 2023.
 - The development proposed is described as 'Termination of use for site as 55 unit accommodation. Redevelopment to form 17 private residential dwellings following conversion of blocks A and C and demolition/ reconstruction of blocks B and D with associated hard and soft landscaping'.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Hiscocks of Magnum Partnership (Brenchley) against Tonbridge and Malling Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. There are no substantive changes relevant to the appeal before me and therefore no interested parties would be prejudiced by my consideration of the 2023 version of the Framework.
4. An agreement under Section 106 of the Town and Country Planning Act 1990 has been submitted with the appeal (the S106). This relates to financial contributions towards various infrastructure and has been taken into account as part of the appeal.

Main Issues

5. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - whether the proposal would make an appropriate contribution to affordable housing, 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

6. Policy CP3 of the Tonbridge and Malling Borough Council Core Strategy 2007 (the LP) states that National Green Belt policy will be applied generally to the west of the A228, which would include the appeal site. The Framework at paragraph 142 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 establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions set out in paragraph 154.
7. One such exception is (g), limited infilling or the partial or complete redevelopment of previously developed land, which would: (i) not have a greater impact on the openness of the Green Belt than the existing development or; (ii) not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
8. The main parties agree that the site is previously developed land as defined by the Framework. It is therefore necessary to establish whether the proposal would conform to either of the limbs to exception (g), which require consideration of the effects on openness.

Openness

9. The Framework states that the essential characteristics of Green Belts are their openness and their permanence. The courts have established that the openness of the Green Belt has a spatial aspect as well as a visual aspect¹. Therefore the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt. A number of factors are capable of being relevant in its assessment.
10. The site is in a rural location outside any settlement boundary. It comprises a number of existing buildings, including two storey buildings towards the front of the site closest to the road and two single storey buildings with shallow pitched roofs behind. Between the buildings the land includes gravel paths and vehicular routes leading to parking and turning areas and defined in part by bollards. The remaining parts of the site are predominately open and include overgrown grass and shrubland.
11. The openness of the wider area is established by the dispersed pattern of development and the predominance of open fields, woodland and hedgerows. Despite the sizable buildings on the appeal site, the spaces between them and the visibility through the site contribute towards these qualities of openness.

¹ Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466

12. The appellant asserts that the proposal would entail a reduction in built footprint of 54m², and an increase in volume of 680m³, equating to just under an 11% uplift from the existing. The uplift in volume largely arises from the increase in the size of Blocks B and D.
13. In addition to the notable uplift in the volume of buildings, the proposal would entail visual changes to the openness of the site. Block B would be substantially increased in size and would utilise part of the footprint of a previous permission for what the appellant describes as a Social Club². Nonetheless, this part of the permission has not been built, and therefore Block B would be substantially increased in size beyond the existing. I return to the matter of the extant permission below. In addition, the ridge height would be increased and reorientated, creating a more substantial roof form over the entirety of the new building.
14. The replacement Block D would be positioned further away from the edge of the road, increasing the perception of space in front of the building. It would also be positioned closer to the other buildings, reducing the spread of buildings on the site to some extent. However, the resulting space in front of the building would be subdivided into private gardens with boundary treatments and associated paraphernalia as may be required by future occupants, diminishing its contribution to the openness in front of Block D.
15. In addition, compared to the existing building the new Block D would be wider and slightly taller, and deeper at the upper levels. It would appear instead as a short terrace of homes and the inclusion of a series of dormer windows in the roofslope would increase the bulk of the roof and accentuate the presence of accommodation at the second floor level, where none currently exists. Together these factors would increase the prominence and perceived scale of the building in views from the street, despite its amended position.
16. The proposal would entail a reduction in the extent of hard surfacing across the site and fewer vehicle movements, which would provide some benefit in terms of the effects of parked vehicles on the site's openness. However, changes to the site layout would also entail the subdivision of parts of the site with boundary treatments to create private and communal garden areas, including land at the front of the site in front of Block D as set out above. New parking areas would also be laid and set among a series of new pathways and hedgerows, as well as new bin stores. Additional paraphernalia would also be likely to occur across the site in connection with its residential use. Given the proximity of the proposals to the edge of the road, together with the nature of the proposed front boundary treatment, the proposals would be likely to increase the visual prominence of the development overall when viewed from Maidstone Road.
17. Overall, while the proposal would improve openness in some limited respects, for the reasons set out, the proposal as a whole would cause a considerable reduction in both the spatial and visual aspects of the Green Belt's openness. As such the proposal would have a greater impact on the openness of the Green Belt than the existing development, and would not conform to the first limb of paragraph 154 of the Framework set out above. As the proposal would not contribute to meeting an identified affordable housing need, the proposal would also not meet the second limb.

² Council reference 15/03568/FL

18. As a consequence, the proposal would not meet the exception to inappropriate development set out in paragraph 154(g) of the Framework. There is not substantive evidence that the proposal would conform to any other exception set out in the Framework, nor the circumstances set out in paragraph 155. Therefore, the proposal would be inappropriate development in the Green Belt.

Affordable Housing

19. Policy CP17 of the LP states that in rural areas, affordable housing provision will be sought on all sites of 5 dwellings or above, or 0.16ha or above, at a level of 40% of the number of dwellings in any scheme. It states that in exceptional circumstances, it may be agreed that affordable housing may be provided on another site or by means of a commuted sum. The Council state that in response to the provisions of the Framework, the threshold for affordable housing provision has been raised to 10 or more dwellings. The Council's Affordable Housing Supplementary Planning Document 2008 (the SPD) sets out the need for affordable housing in the Borough and how it will be secured. The Framework states that all viability assessments should reflect the recommended approach in national planning guidance.
20. The Council does not specifically dispute the need for a site specific viability appraisal here and the matter in dispute relates to establishing a benchmark land value for the site. In the absence of comparable transactions for student accommodation in the countryside, the appellant refers to an alternative use value based on a scheme of co-living. The appellant has demonstrated there is a degree of market interest in that alternative use, albeit from a single party, to provide accommodation for a government agency based on letting the bedrooms.
21. The SPD acknowledges that alternative use value can be among the factors included in site appraisals. Planning Practice Guidance (PPG) also acknowledges that the alternative use value of the land may be informative in establishing benchmark land value, but that it should be limited to those uses which would fully comply with up to date development plan policies. It goes on to state that plan makers can set out circumstances in which alternative uses can be used, including demonstrating that the alternative use could be implemented and an explanation as to why it has not been pursued.
22. There is little evidence before me relating to the alternative use value, in particular whether it reflects the policy requirements or could reasonably be implemented on the site. The reason it has not been pursued is brief, referring only to the nature of the appellant's business. Despite the evidenced emails between the parties, there is not substantive evidence before me as part of this appeal to substantiate the alternative use value which has been adopted.
23. I appreciate that the appellant sought an alternative methodology given the unusual circumstances of the appeal site. Nonetheless, I am required to assess the proposal based on the evidence put before me and the lack of cooperation does not provide reason to find the proposals acceptable in this regard. On this basis it cannot be established with the necessary degree of certainty that the proposal would deliver an appropriate contribution to affordable housing. This presents conflict with Policy CP17 of the LP as well as the objectives of the Framework relating to the delivery of mixed communities and meeting identified housing needs.

Other Considerations

24. The Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 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.
25. The Council accept that it cannot demonstrate a five year supply of land for housing. The proposed 17 homes would therefore make a contribution to this shortfall and would contribute towards the national objective to boost the supply of homes. These would be on a site which is agreed to be previously developed land. Given the scale of the proposal, moderate weight is given to the benefit of the proposed new homes.
26. The proposal would deliver benefits to the site through inclusion of a comprehensive soft landscaping scheme including native planting, reduction in hard surfaces, and repositioning the new Block D to be further from the road and create a consistent front building line with Block C. These also weigh in favour of the proposal, particularly given the overgrown nature of the existing site, and I note a letter of support from a third party regarding the visual benefits. Together these can be ascribed moderate weight given the scale of these changes.
27. Given the absence of services and facilities close to the appeal site, it is not evident which rural communities future occupiers of the development would otherwise support and use. There would nonetheless be some economic benefit arising from expenditure of future occupants into the local economy and from the construction process.
28. Part of the effects of the proposal on openness arise from development on land for which planning permission exists for a new building adjacent to Block B³. While the Council do not dispute that that permission remains extant, there is little evidence relating to the likelihood of that development otherwise being carried out if the appeal were to be dismissed. Even if this was a legitimate fallback position for the appellant, I find the effects of the approved building on the openness of the Green Belt would be less than the appeal scheme due to its low level roof form and separation from the existing Block B building. As such this fall back position attracts little weight as a consideration in favour of the proposal.
29. The proposal would entail a reduction in vehicle movements associated with the site and the effects of this change on the Green Belt's openness are considered above. However, in the absence of evidence of harm arising from the existing level of movements, I otherwise afford this change little weight. While the proposal has been found to be policy compliant in other respects, including its effects on character and appearance, these matters are neutral and do not weigh in favour of the development.
30. While there are benefits which weigh in favour of the development, taken together, the weight of other considerations in this instance would not be sufficient to clearly outweigh the totality of harm to the Green Belt and the harm through the absence of affordable housing, to which I give both

³ Council reference 15/03568/FL

substantial weight. Consequently, the very special circumstances necessary to justify the development do not exist.

31. Even if agreement had been reached that the proposal could not reasonably make a contribution to affordable housing, it would remain the case that the totality of harm to the Green Belt, to which I am required to give substantial weight by the Framework, would not be clearly outweighed by the other considerations set out above. As such, even if that agreement had occurred, very special circumstances would still not exist.

Other Matters

32. In the absence of a suitable land supply for housing, the provisions of paragraph 11d) of the Framework apply to the appeal. However, as set out above, the application of policies in the Framework provide a clear reason for refusing the development proposed insofar as they protect the Green Belt. The proposal would not therefore benefit from the presumption in favour of sustainable development.
33. While a S106 has been provided, it is not necessary to consider this in detail since the appeal is to be dismissed on other substantive issues and any findings on the S106 would not affect the overall decision.

Conclusion

34. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal is dismissed.

C Shearing

INSPECTOR