



Appeal Decision

Site visit made on 8 April 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2024

Appeal Ref: APP/G2245/W/23/3331999

Grove Farm, The Grove, West Kingsdown, Kent TN15 6JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs A and J Mitchem against the decision of Sevenoaks District Council.
 - The application Ref is 23/00577/OUT.
 - The development proposed is an outline application for the demolition/clearance of existing buildings and structures and the erection of up to three single-storey dwellings with all matters reserved except access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought, with all matters reserved except access. The application was accompanied by a proposed block plan showing the proposed access, with an indicative housing and landscaping layout. A revised proposed block plan, drawing number 08 Revision B, was submitted during the planning application process. I have limited evidence of consultation on this but as it only shows changes to the indicative layout of development on plot 3, my consideration of this plan would not cause prejudice to interested parties. Therefore, I have determined the appeal based on the proposed access in this proposed block plan with the remaining proposed development layout for illustrative purposes only.
3. An alternative proposed block plan dated 23 October 2023 was submitted with the appeal documents, showing a potential layout for two dwellings and significant changes to the proposed access road. The Procedural Guide for Planning Appeals makes clear that the appeal process should not be used to evolve a scheme and it is important that what is considered is essentially what was considered by the Council, and on which interested people's views were sought. Accordingly, my consideration of the alternative proposal could cause prejudice to interested parties by depriving those who should have been consulted on the change the opportunity of such consultation. Therefore, my decision on the appeal is based on the drawings submitted with the planning application, including the revised proposed block plan outlined above.
4. The parties refer to the various structures on the site. Planning permissions were granted for the pole barn and stable block and the Council accepts that many other structures could be lawful through the passage of time. Within the context of this appeal under section 78 of the Act, it is not my remit to formally determine whether the structures are lawful. If the appellants wish to ascertain

whether they are lawful, an application can be made under section 191 of the Act. Nevertheless, I have had regard to the presence of the structures on the site in my overall decision.

5. There was a previous proposal for four dwellings on the site which was dismissed on appeal (application ref 07/03898/FUL). The appellants make some comparisons between the current proposal and the previous one, but limited details of the earlier scheme have been provided and I must determine the proposed development on its merits based on the plans before me.
6. The National Planning Policy Framework (the Framework) was revised in December 2023. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Main Issues

7. The main issues in this appeal are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - the effect of the proposal on the openness and purposes of the Green Belt; 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 required to justify the proposal.

Reasons

Whether the proposal would be inappropriate development

8. The site lies within the Green Belt identified in the Council's Local Development Framework Core Strategy 2011 (CS). Policies LO1 and LO8 of the CS seek to protect the extent of the Green Belt and require development to be compatible with policies for protecting the Green Belt.
9. Paragraph 154 of the Framework states that the construction of new buildings is inappropriate in the Green Belt. It sets out some exceptions, but the parties agree that the proposal does not fall within any of the exceptions.

Effect of the proposal on openness

10. As set out in the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness is the absence of development and has both spatial and visual dimensions. The Supreme Court has found that the visual quality of the landscape is not in itself an essential part of the openness for which the Green Belt is protected, and that the visual effects on openness are a matter of planning judgement¹.
11. The Grove is a private road with dwellings either side which is washed over by the Green Belt. The site lies at the end of the road, separated from it by an access gate and a tall hedge which largely screens views of it from The Grove. It contains various buildings and structures of different sizes, including storage

¹ R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3

- sheds, containers, a trailer and a caravan, a track and large areas of grassland. There are public rights of way to the north and west of the site.
12. The proposal is to retain a stable block and remove all the other structures to provide up to three dwellings with an associated access road. It would not extend beyond the area occupied by the existing structures.
 13. Information on the footprints and volumes of the existing structures is provided, but the parties disagree on which structures should be included within these calculations (the calculations). The Council considers that some structures are not permanent and should not be included.
 14. Conversely, the appellants contend that most of the structures have been on the site for some time, giving them a degree of permanence, which means they can be considered as buildings. In this respect, the appellants refer to court cases which found that size, permanence and physical attachment are the primary factors for determining what is a building², and to others which considered whether the structures in those cases were permanent³. There is also reference to an appeal decision which concluded that shipping containers were buildings, and their erection was operational development in that case⁴. An application for a Lawful Development Certificate would be an option for demonstrating whether the structures on the site are buildings.
 15. Regardless of whether the various structures are temporary or permanent and which ones should be included in the calculations, except for the pole barn and retained stable block, there is limited evidence that they are lawful. Further, whilst it is stated that the footprint and volume of the dwellings would not exceed those of the existing structures proposed for demolition, in the absence of detailed proposed plans, there is insufficient information to assess this. As such, I cannot be satisfied that the proposal would not result in increased built development on the site and consequent harm to spatial openness.
 16. The proposed development would result in a different location and form of development on the site, less dispersed than the existing structures. The illustrative layout indicates that the house on plot 1 would align with the existing dwelling at the end of The Grove and the rear boundary of plot 3 would follow a similar line to the adjacent property. Nevertheless, the scheme would be visible from the nearby public rights of way. Thus, any increase in built development would also impact on visual openness.
 17. The effect on openness is not only related to the size of the buildings but also their purpose and the intensity of their use. The introduction of three dwellings onto the site would result in the creation of gardens with their associated domestic paraphernalia. In addition, the access and hardstandings would be used for the turning, manoeuvring, and parking of vehicles. Such features and activities would reduce spatial and visual openness compared to the existing use of the site.

² including *Skerrits of Nottingham Ltd v SSETR & Harrow LBC* (No. 2) [2002] EWCA Civ 5569

³ *Barvis v SSE* [1971] 22 P&CR 710, *R v Swansea CC ex parte Elitestone* [1993] JPL 1019, *R (oao Hall Hunter Partnership) v FSS* [2006] EWHC 3482 (Admin) and *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin)

⁴ Appeal Ref: APP/W1850/X/11/2164822

Effect of the proposal on Green Belt purposes

18. The five purposes of the Green Belt are set out in the Framework. The Council is concerned about the impact of the proposed development on purpose (c) which serves to assist in safeguarding the countryside from encroachment.
19. The Council's Green Belt Assessment includes the site within the large parcel 78 which scores well against purpose (c) as it contains less than 5% built form and/or possesses a strong unspoilt rural character. Much of the site is currently undeveloped and the larger farmyard style buildings are typical in a rural area, so it reflects the character of the wider parcel. Therefore, the introduction of three dwellings with associated access would result in encroachment into the countryside and significant harm to this Green Belt purpose.
20. For the reasons above, I conclude that the proposal would be inappropriate development in the Green Belt, would not preserve its openness and would conflict with the purposes of including land within it. As such, it would be contrary to Policies LO1 and LO8 of the CS and would conflict with the Framework.

Other considerations

21. The Framework seeks to boost the housing supply and highlights the important contribution small and medium sites can make, whilst supporting development which makes efficient use of land. The Council cannot currently demonstrate a five-year housing land supply required by the Framework. The proposal would make a contribution of three additional homes to the supply of housing, making better use of land on a windfall site with connections to West Kingsdown. It would contribute towards Sevenoaks District's housing supply, making a modest difference to addressing the shortfall, and therefore I attribute moderate weight to this benefit.
22. The appellants indicate that they are on the Council's self-build register and that the proposal would provide self-build dwellings, including a home for themselves. In this respect, I note that the appellants have sought to promote the site for self-build development as part of work on the emerging Local Plan. However, the evidence indicates that the Council is meeting its needs for self-build and custom-built dwellings, with a current surplus of such plots. Therefore, I attach only limited weight to this benefit.
23. The proposal would provide a turning area for refuse and other vehicles to turn at the end of The Grove which currently does not exist. As The Grove is a lightly trafficked, private road and there is little evidence of highway safety issues, I accord this benefit limited weight.
24. The appellants refer to a potential allocation for residential development to the north of the appeal site in a recent consultation on the Council's emerging Local Plan. However, this does not relate to the appeal site so it is of limited relevance to the current proposal, and in any event, there is no evidence to suggest that the emerging Local Plan should carry any weight.
25. The Council did not find harm or development plan conflict in relation to several other matters, including living conditions, ecology, character and appearance, landscape including the National Landscape (formerly the Area of Outstanding Natural Beauty), flood risk and highways. However, even if I were to agree

with the Council on these points, the absence of harm would be a neutral matter which would not carry weight in favour of the proposal.

Other Matters

26. The Council indicates the need for a contribution towards education provision to be secured via a legal agreement. The appellants dispute this given that the lack of a planning obligation was not a reason for refusal and that, if approved, the development would be subject to the community infrastructure levy. However, there is no need to consider the implications of the proposal on education provision because the scheme is unacceptable for other reasons.

Whether there would be Very Special Circumstances

27. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. There would also be adverse impacts on its openness and purposes. Substantial weight should be given to the harm caused to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
28. I give modest weight to the provision of three additional homes and limited weight to the provision of self-build dwellings and a vehicular turning area. However, the other considerations would not clearly outweigh the harm to the Green Belt by reason of inappropriateness, loss of openness and impact on its purposes. Consequently, the very special circumstances necessary to justify the proposed development do not exist.

Planning Balance and Conclusion

29. Paragraph 11(d) of the Framework is engaged as the Council is currently unable to demonstrate a five-year housing land supply. In such circumstances, this states that development should be approved unless the application of policies in the Framework that protect areas of particular importance provides a clear reason for refusing the development. In this appeal, the application of the Framework's Green Belt policies provides a clear reason to refuse the development. The proposal would also be contrary to Policies LO1 and LO8 of the CS.
30. Consequently, the proposal conflicts with the development plan and the material considerations, including the Framework and the very special circumstances test therein, do not indicate that the appeal should be decided other than in accordance with it. Accordingly, the appeal should be dismissed.

A Wright

INSPECTOR