



Appeal Decisions

Site visit made on 5 March 2024

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 25 April 2024

Appeal A: APP/H2265/W/23/3327452

Gibbons Place, Tonbridge Road, Ightham, Sevenoaks, Kent TN15 9AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Anthony Potter against the decision of Tonbridge and Malling Borough Council.
- The application reference is TM/23/00685/FL.
- The development proposed is garage/store as a replacement for existing dilapidated outbuilding, to be demolished.

Appeal B: APP/H2265/Y/23/3327458

Gibbons Place, Tonbridge Road, Ightham, Sevenoaks, Kent TN15 9AP

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by Mr Anthony Potter against the decision of Tonbridge and Malling Borough Council.
 - The application reference is TM/23/00686/LB.
 - The works proposed are garage/store as a replacement for existing dilapidated outbuilding, to be demolished.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated it on 20 December 2023. Those parts of the Framework most relevant to these appeals have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
4. As the appeals relate to a listed building I have had special regard to sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act).
5. There is no dispute that the site lies within the North Downs National Landscape, which is a protected landscape. I have, therefore had special regard to section 85(A1) of the Countryside and Rights of Way Act 2000 (as amended) (the CRWA).

Main Issues

6. The main issues in these appeals are: -

- Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies, including any relevant effects on the openness of the Green Belt; (Appeal A only)
- The effect of the proposal on the landscape character and scenic beauty of the North Downs National Landscape (the NDNL) with particular reference to trees; (Appeal A only)
- The character and appearance of the local area bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II "Gibbon's Place" (Ref: 1204235) (the LB) listed building; (Appeals A and B) and: -
- Whether the 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. (Appeal A only).

Reasons

Whether Inappropriate Development (Appeal A only)

7. There is no dispute between the parties that the land lies within the Metropolitan Green Belt. Policy CP3 of the Tonbridge and Malling Borough Council Core Strategy (2007) (the CS) establishes the extent of the Green Belt and seeks to protect it in accordance with National Green Belt policy.
8. Paragraph 154 of the Framework establishes that the construction of new buildings in the Green Belt is inappropriate subject to a number of exceptions. These exceptions include: -
 - the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
 - the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces; and: -
 - limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
9. Policy CP3 of the CS is broadly consistent with the aims of those parts of the Framework which seek to protect the Green Belt from inappropriate development.
10. The proposal would demolish an existing modest shed and replace it with a new garage/store. The new garage/store would be of a substantial size, significantly greater in volume than the existing shed. I therefore find that it is materially larger than the building which it replaces. There would be a spatial reduction in the openness of the Green Belt as a result of the replacement of the existing shed.
11. The openness of the Green Belt has both a visual and spatial dimension. Although the rear part of the building, identified as an open bay kitchen, and an area to the side, identified as a log store, would be open on three sides,

they nonetheless have a solid appearance. Whilst the existing planting along the boundaries of and within the site would largely screen the buildings from the wider countryside, glimpses of the building would be available to anyone passing on the road and to persons approaching the house on the private drive. In visual terms therefore, the increase in built form within the site would result in a reduction in the visual openness of the Green Belt as well as spatial openness and together, given the scale of the impact, this would constitute significant harm.

12. Even were I to consider the replacement building to be an extension of the main dwelling, or the land to be previously developed land, the proposal would still need to preserve its previous openness.
13. The Green Belt serves five purposes, including, amongst others, to assist in safeguarding the countryside from encroachment. The building would lie within the immediate vicinity of the dwelling. Given that the development would be contained within the existing plot boundary and lie close to the main dwelling I find that it would not encroach further into the countryside and so would not be contrary to the purposes of the Green Belt.
14. I conclude that the proposal would amount to inappropriate development in the Green Belt having regard to the Framework, and the effects on the openness of the Green Belt.

Heritage and Trees

Effect on the Area of Outstanding Natural Beauty (Appeal A only)

15. The appellant has submitted an Arboricultural Report to accompany these appeals. In that report their consultant recommends that, whilst no trees were in such a condition that removal is recommended irrespective of the outcome of these appeals, four trees would need to be felled in order to facilitate the proposal. This was not because they could not be retained for technical reasons of construction, but because their crowns would overhang the proposal and would require sustained future maintenance.
16. However, during my site visit I observed that the felling of the trees had already occurred. Whilst these trees have been lost, I note that they were not specifically protected by a Tree Protection Order (TPO), or other means.
17. The site is well-treed and is screened in wider views from the surrounding countryside by mature trees and planting on the boundaries to the north, east and south, although there is a gap on the south-east corner allowing views out into the wider, open, landscape. Between the shed and the road lies a belt of mature evergreen trees set back from the road, but close to the shed. These largely screen the shed. From the evidence before me the lost trees were closely associated with this group, such that their canopies were contiguous.
18. As such the lost trees formed a part of the green backdrop when viewed from the open land to the south east, whilst in other views they blended into the existing canopies. The vast bulk of the tree canopy remains and thus the removal of these trees, whilst incrementally diminishing overall verdancy within the site has had no discernible effect on the appearance of the site when viewed from outside. I therefore find that the removal of the trees has not adversely affected the scenic beauty of the NDNL.

19. I therefore conclude that the proposal would not have an adverse effect on the landscape character and scenic beauty of the North Downs National Landscape with particular reference to trees. The proposal would, therefore, accord with policy NE4 of the Tonbridge and Malling District Council Managing Development and the Environment Development Plan Document (2010) in as much as these seek to avoid the net loss or deterioration of woodland unless the harm can be reduced to acceptable limits. For similar reasons the proposal would accord with the aims of Section 15 of the Framework.
20. Section 85(A1) of the CRWA places a statutory duty upon me to have regard to the purpose of conserving and enhancing the natural beauty of the NDNL. However, I have found that the proposal would not harm the landscape and scenic beauty of the NDNL and thus would conserve its scenic beauty.
21. Although I have found that the loss of the four trees has not resulted in harm to the NDNL, their loss has, in my view, resulted in a change to the setting of the LB and I deal with this below.

Setting of the LB (Appeals A and B)

22. The LB is a hall-house dating from around 1500, with a mid-16th century return wing to the right. It was originally located in Benenden but moved to Ightham in 1935-6. Whilst it has moved location, it retains much of its original fabric and is a good example of its kind, providing evidential value of period vernacular design and construction and its pleasing appearance and patina of age provides aesthetic value. It is set within a generous, well-treed landscaped plot.
23. Whilst not the original setting of the LB the landscaping of the plot, including the proliferation of trees, which provide a sense of enclosure and peace within the site and a detachment from the intrusion of the vehicular traffic on the road, provide a tranquil, verdant setting to the listed building in which to appreciate its traditional rural design. This is a positive contribution to the way in which the LB is experienced. Given the above, I find the setting of the building, insofar as it relates to this appeal, to be primarily associated with its aesthetic value as a landscaped setting for the LB and that this directly contributes to its special interest.
24. For the purposes of the Act, a listed building includes any structure that is within its curtilage which has existed since before 1st July 1948. As structures within the curtilage that have a principal and accessory relationship to the main building, the outbuildings are also consequently listed. Whilst not in the list description, listings are primarily for identification purposes and do not provide an exhaustive or complete description of the special interest.
25. There is no suggestion that the shed is a later addition and, in the absence of evidence to the contrary, that it forms part of the LB. The shed is a simple structure, but is showing signs of dilapidation, the roof, floor and one wall showing evidence of collapse.
26. The shed is a modest, inoffensive structure set unobtrusively to one side of the LB. Thus, overall, it has a neutral effect on its setting.
27. Considering first the positioning of the proposed garage/store, this would be located between the dwelling and the road and would be largely concealed from passers-by by a dense row of evergreen trees. From the drive to the dwelling,

the proposed garage/store would be larger and visually more intrusive in views encompassing the dwelling and the shed. However, the building is of a scale that would remain subservient to the dwelling it serves and be set to the side. It would have a rustic appearance and would not look out-of-place within the setting of the LB. Overall I do not consider that the siting of the shed would adversely affect the features of the setting that I have identified above as making a positive contribution to the special interest of the LB.

28. Moving on to the loss of the trees and the effect of this in regard to the setting of the LB, this diminishes the verdancy of the area, which I have identified above as making a positive contribution to the special interest of the LB and the way in which it is experienced.
29. Thus, I find that the proposal, in as far as it necessitates the removal of trees within the site, would fail to preserve the special interest of the listed building. Consequently, I give this harm considerable importance and weight. I further note that the harm, resulting from the loss of the trees, and the effect of that on the verdant setting of the LB has already occurred,
30. Paragraph 205 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 206 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. Given that the proposal would not cause physical harm to the features of interest of the heritage asset, but rather the disputed level of harm solely relates to how the proposal would affect the experience of the LB within its setting, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
31. The proposal would provide short term employment in the construction industry. These would likely be local jobs. There would also be further benefits in the supply chain. The proposal site lies in a rural area and the stated intention of the Government is to encourage development that supports the rural economy. Whilst these would be public benefits, given the scale of the proposal, they would be very limited and transient.
32. The proposal would replace a building in a poor state of repair with another which would have a functional use. However, this is a private benefit and so does not outweigh the harm that I have identified.
33. Given the above and in the absence of any significant public benefit that outweighs the harm that I have identified, I conclude that, on balance, the proposal would fail to preserve the setting of the Grade II listed building. This would fail to satisfy the requirements of the Act and paragraph 206 of the Framework.

Other considerations (Appeal A only)

34. No argument has been set out before me that special circumstances exist that would justify inappropriate development in the Green Belt. I have identified above that the public benefits resulting from the proposal would be very limited.

35. To implement of the proposal it is necessary to remove four trees. Whilst these have already been removed and they were not subject to a TPO, I do not consider that their removal constitutes a fall back position in the applicant's favour. The fact that they have been removed has resulted in harm being caused to the setting of the LB.

Green Belt balance (Appeal A only)

36. Policy CP3 of the CS and Paragraph 152 of the Framework states that inappropriate development will not be permitted unless very special circumstances can be demonstrated. 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.

37. The appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. There would also be significant harm to the openness of the Green Belt. Paragraph 153 of the Framework requires substantial weight to be given to any harm to the Green Belt.

38. Accordingly, the harm to the Green Belt is not clearly outweighed by other considerations and therefore the very special circumstances necessary to justify the development do not exist. The proposal would therefore be at odds with Policy CP3 of the CS and Section 13 of the Framework.

Conclusion

Appeal A

39. The proposal would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has failed.

Appeal B

40. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

I A Dyer

INSPECTOR