



Appeal Decision

Site visit made on 15 February 2024

by R Lawrence MRTPI, BSc (Hons), PGDip (TP)

an Inspector appointed by the Secretary of State

Decision date: 7 May 2024

Appeal Ref: APP/M3645/W/23/3328736

Land east of Woodcock Hill, Felbridge RH19 2RD

- 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 and Mrs H and V Mistry and Patel against Tandridge District Council.
 - The application Ref TA/2022/1656, dated 16 December 2022, was refused by notice dated 30 June 2023.
 - The development proposed is: demolition of existing three agricultural buildings together with two other buildings and erection of three dwellings together with parking and use of existing access.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr and Mrs H and V Mistry and Patel against the decision of Tandridge District Council. This application will be the subject of a separate decision.

Preliminary Matters

3. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. The main parties have had the opportunity to comment on the relevance of the revised Framework within any final comments. I have determined the appeal in light of the revised Framework.
4. On 05 October 2021 the Council confirmed that prior approval was not required for development for change of use from agricultural barns to 3 dwellinghouses (Use Class C3) (Prior approval for change of use under Schedule 2, Part 3, Class Q). As such, it constitutes a realistic fall-back scheme that could be implemented were this appeal to be dismissed. Accordingly, further comments were sought from the main parties in respect of the potential for the joint implementation of the appeal scheme, together with the prior approval fall-back scheme¹.
5. A new Local Plan titled Tandridge District Council Our Local Plan: 2023, was submitted for examination on 18 January 2019. A copy of the examining Inspector's report has been provided to me, which concludes that the new

¹ Reference 2021/1478/NC

Local Plan is not sound and therefore recommended for non-adoption. Given this, I attach negligible weight to the New Local Plan.

6. At the start of the appeal the appellant has submitted a Flood Risk Assessment prepared by Monson dated 14 July 2023, an Arboriculture and Woodland Assessment prepared by Quaife Woodlands dated 27 July 2023 and an Energy Statement prepared by Therm Energy Limited dated 04 August 2023. The reports were not submitted as part of the original planning application. Nonetheless, the appeal procedure has provided an opportunity for the main and interested parties to comment on these reports, and therefore I have taken account of this evidence in my determination of the appeal.
7. The second reason for refusal on the Council's decision notice relates to insufficient information to demonstrate that the proposal would not increase flood risk. The Council, through its statement of case, has confirmed that following the submission of the Flood Risk Assessment, it no longer seeks to defend that reason for refusal. The main issues have been framed accordingly.

Main Issues

8. 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;
 - the effect of the proposal on the openness 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 development.

Reasons

Whether the proposal would be inappropriate development

9. Development within the Green Belt is inappropriate with the exceptions of the types of development listed in paragraphs 154 and 155 of the Framework. The appellant contends that the proposal meets criteria d) and g) of paragraph 154. These refer to "the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces" and "the .. partial ... redevelopment of previously developed land ... which would - not have a greater impact on openness of the Green Belt and the purpose of including land within it than the existing development".
10. Policy DP10 of the Tandridge Local Plan Part 2 (TLP) is the sole policy listed in the first reason for refusal. This policy highlights that inappropriate development will normally be refused, except where very special circumstances exist to the extent that other considerations clearly outweigh any potential harm to the Green Belt and any other harm. This policy is consistent with the Framework in that it reflects its aims of controlling inappropriate development.
11. Although not listed in the reason for refusal, Policy DP13 of the TLP sets out a number of exceptions to inappropriate development. This includes the replacement of buildings within the Green Belt (criterion F) subject to a number of criteria. Although criterion 3 requires the new building to be sited on or close to the position of the building it is replacing, except where an alternative siting improves the openness of the Green Belt, insofar as the policy is relevant to

- the particular circumstances of this case, it is consistent with the Framework in requiring a new building to be in the same use as the one being replaced.
12. The appeal site and the surrounding land contains a series of agricultural buildings and other buildings and structures, as well as an area of woodland. The proposal is for the construction of three dwellings with associated parking, landscaping and access following the demolition of five existing buildings.
 13. The buildings which the proposal seeks to replace, are in agricultural use. Although the prior approval fall-back scheme exists, this has not been implemented to date and therefore the proposed residential dwellings would not be in the same use as the existing buildings. The *Athlone House Ltd v SSCLG* [2015] EWHC 3524 (Admin) case held that an unimplemented planning permission (which could include a prior approval scheme) could not count as part of the baseline.
 14. Case law indicates that a, or multiple larger buildings, could in some circumstances, replace a group of existing buildings². However, irrespective of this and whether the proposed buildings would be materially larger, than those they would replace, the proposal would fail to meet criterion d) of paragraph 154 due to the proposed buildings not being in the same use.
 15. The glossary to the Framework identifies Previously Developed Land as 'Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed structure infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings;.....'. The existing agricultural buildings to be replaced, are therefore excluded from the definition of previously developed land. The proposal would therefore not fall within criterion g) of paragraph 154 due to its current use. The proposal would therefore constitute inappropriate development in the Green Belt.

Openness

16. A fundamental aim of Green Belt policy, as set out in paragraph 142 of the Framework, is to prevent urban sprawl by keeping land permanently open. Openness has a visual and spatial dimension.
17. The appeal site is located within a field, within the countryside. Although there are several agricultural buildings and structures within the site, there is a general absence of built form. Further beyond the site, there is low density residential development. The low level of built form together with the areas of woodland and vegetation both within and beyond the site contribute to a very rural setting.
18. In spatial terms, there would be harm to the openness of the Green Belt resulting from the erection of three substantial buildings in close proximity to each other, as replacements for five smaller agricultural buildings which are well spaced out within the site. The proposed siting would introduce a substantial amount of built form in a part of the site which is very open. Although the footprint of built form would be slightly reduced compared with

² *Tandridge DC v SSCLG & Syrett* [2015] EWHC 2503

existing, there would be an increase in the overall volume of built form, albeit a modest one.

19. The change in purpose from agriculture to residential is also relevant to the assessment of openness. The existing dispersed agricultural buildings are a form of development which is not inappropriate in the Green Belt. The proposed dwellings would also have large gardens. Structures are frequently placed within gardens, together with other domestic paraphernalia. These may not constitute built development; however, they would impact upon spatial openness. Given these factors, the harm to openness in spatial terms would be significant.
20. In visual terms, the proposed buildings would be clearly visible from within the site and as well adjacent fields and residential properties, particularly given their siting within an open area of the site. The proposed domestic buildings and associated paraphernalia, in close proximity to each other, would have an adverse visual impact compared with the agricultural buildings and paraphernalia which reflect the rural setting and countryside location. The addition of boundary treatments and landscaping would result in a more domestic appearance to the land, which affects the visual openness of the site. Public views would be very limited due to the distance to the nearby footpath, and intervening vegetation and woodland, which reduces the extent of visual harm to openness. Nonetheless, some visual harm would still exist given its open position within the site and the views from adjacent private gardens.

Other considerations

21. The proposed development would constitute inappropriate development in the Green Belt and would result in a loss of openness. The Framework establishes that substantial weight should be given to any harm to the Green Belt. Very Special Circumstances will not exist unless the harm to the Green Belt and any other harm, is clearly outweighed by other considerations.
22. The prior approval fall-back scheme³ allows for the conversion of three agricultural buildings to residential dwellings. The current appeal scheme is presented as an alternative to the fall-back scheme. The prior approval application, together with the clear intent of the appellant to undertake the fall-back scheme, indicate a realistic prospect of it being implemented.
23. The appeal scheme would result in a slightly reduced volume of built form on site in comparison with the fall-back scheme, due to the demolition of two additional existing buildings on site. In addition, the appeal scheme would consolidate the built form within a more focused area of the site. However, any benefits in terms of the consolidation of built form are outweighed by the siting of the proposed dwellings.
24. The appeal scheme involves the dwellings being sited within a more open location within the site. This would have an increased effect on openness. Additional landscaping along the woodland edge as well as along the eastern site boundary would assist in further minimising any public views of the appeal scheme. Furthermore, landscaping would soften the appearance of the buildings. However, whilst this could further reduce the harm to openness in visual terms, this would not address the identified spatial harm.

³ Reference 2021/1478/NC

25. The proposed siting of the buildings proposed through the fall-back scheme, would be spread out from each other and in the case of two of the buildings, in close proximity to the woodland edge. The woodland would provide a soft landscaping buffer to the proposal and would serve to minimise the effect on openness in visual terms. The potential for additional landscaping does not therefore address the harm to openness from the proposed siting in an open area of the site.
26. The curtilage for each of the proposed dwellings would be significantly larger than within the fall-back scheme. Whilst there is disagreement between the parties on the total size, the curtilage would be tightly drawn around the footprint of the buildings in the fall-back scheme. By contrast, the appeal scheme would include areas of curtilage which extend significantly beyond the rear and side elevations of the building footprints. The increased size would allow for an increase in domestic paraphernalia which would add to the impact on openness, particularly in spatial terms.
27. It is contended that moving activity away from the location of the chicken barn would benefit openness through a reduction in vehicular activity in one part of the site. It would also reduce the extent of the track that would be used to access the dwellings. However, the number of dwellings proposed is the same as the fall-back scheme, and in both cases therefore the overall level of vehicular activity would be similar. Given the whole site lies within the Green Belt, the focus of vehicular activity within a slightly smaller part of the site would only carry very limited benefit to openness.
28. It is common ground that the proposed dwellings would represent an improvement over the existing agricultural buildings, in terms of design and appearance. Although it has been submitted to me that the current proposals also represent an improvement in terms of design and appearance in comparison with the fall-back scheme, as that scheme involves the conversion of the existing agricultural buildings, both that and the current scheme are appropriate in terms of reflecting the rural character of the area and I find there is no clear benefit to either.
29. The fall-back scheme would involve dwellings positioned in close proximity to two protected trees, T18 & T19. The residential occupation of the fall-back scheme, given the close proximity, could result in some post development pressures to fell or lop the trees. However, as the trees are protected, separate controls over such works are in place. The dwellings proposed through the current appeal scheme would avoid such pressures due to their position away from protected trees and their rooting environments. Although there would likely be some benefit to the alternative siting of the dwellings proposed, there is no substantive evidence that the fall-back scheme would cause harm to the protected trees such that could not be managed through other controls in place.
30. The fall-back scheme is likely to cause long term adverse impacts on the nearby ancient woodland and its buffer zone. These would be largely associated with the residential occupation of the dwellings and would include associated noise, light pollution including from vehicles entering and leaving, external activity visible to faunal species and tree damage along the woodland edge resulting from pressures from future occupiers. As the fall-back scheme did not

- require prior approval, no mitigation was secured in respect of its effect on ancient woodland.
31. The appeal scheme also has high potential to cause adverse impacts to ancient woodland from the demolition process. However, unlike the fall-back scheme the harmful works would be temporary and could be mitigated against, thereby reducing the potential impact. A mitigation and enhancement plan has been submitted and a condition has been recommended seeking to secure its implementation.
 32. The potential benefits of the appeal scheme to ancient woodland, as an alternative to the fall-back scheme, are significant. The Framework recognises that ancient woodland is an irreplaceable habitat which would be very difficult to restore or replace once destroyed.
 33. However, in order for these benefits to be realised, the appeal scheme would need to be implemented instead of, the fall-back scheme. The dwellings proposed are on different footprints to those they seek to replace, and which benefit from permission for conversion through the fall-back scheme. The exception to this is proposed plot 2, which would be sited on the same position as the cattle barn. Therefore, it is possible that the appeal scheme, in whole or in part, could be implemented in addition to, rather than instead of, the fall-back scheme.
 34. Although a condition has been suggested relating to the phasing of the development, this would not preclude partial implementation of the appeal scheme. The phasing approach within the suggested condition, would allow for the construction of the new dwellings, prior to the demolition of those which they are intended to replace, or the retention of buildings proposed for demolition. This would result in temporary additional harm to openness through the increased number of buildings on site.
 35. Furthermore, I am not satisfied that the condition wording would preclude the partial implementation of the fall-back scheme. There is also no precise timescale for the implementation of the mitigation and enhancement plan, which relates to, ancient woodland. Given these factors, there is insufficient certainty that the potential benefits of the appeal scheme would be realised. The weight to be attached to the fall-back scheme, and the relative benefits of the current appeal as an alternative, are therefore limited.
 36. The appeal scheme could achieve a 50% saving in carbon dioxide emissions through the use of air source heat pumps and solar photovoltaic panels, well in excess of the 10% requirement set out in policy CSP14 of the Tandridge District Core Strategy (CS). This saving could be secured through a planning condition in the event of my allowing the appeal. This is a positive factor which weighs in favour of the appeal scheme, to which I attach moderate weight.
 37. The scheme would make a modest contribution towards the supply of housing in a rural area, and towards the government's target to significantly boost the supply of homes at a time when the Council is unable to demonstrate a five-year supply of housing. Small sites can make an important contribution towards housing delivery. However, as the scheme relates to the provision of three additional dwellings, the proposal would only make a small contribution towards the supply of housing. Furthermore, it is noted that the same number

of dwellings would be delivered through the fall-back scheme. As such, I attribute moderate weight to this benefit.

38. My attention has been drawn to an appeal decision at Land West of Limpsfield Road⁴. That decision related to new housing in the Green Belt and was allowed. It related to a scheme for the construction of 100 dwellings, including affordable housing, and therefore delivered a much more extensive package of benefits which included the provision of new housing, on-site renewable provision, re-provision of sports facilities and sustainable transport improvements. As such, that scheme is fundamentally different to the proposal before me.
39. A number of other decisions to grant planning permission in the Green Belt, by Tandridge District Council have been cited by the appellant. These include decisions at Redcot, Brooklands Farm, Chelsham Heights and the Haybarn. Those decisions are relevant examples of where Very Special Circumstances have been found such to justify otherwise inappropriate development in the Green Belt. In a number of these cases, a prior approval fallback, either extant or recently expired, was found to outweigh harm to the Green Belt. Each of these cases has been assessed on their own individual merits, whilst collectively these decisions highlight the potential relevance of a fall-back scheme, and that this can in some cases outweigh identified harm to the Green Belt, the current appeal scheme has been assessed on its own merits.

Green Belt Balance

40. Taken together, there are other considerations in this case that weigh modestly in favour of the development. However, the proposal would be inappropriate development in the Green Belt, which is harmful by definition. There would also be significant harm to the openness of the Green Belt. Paragraph 153 of the Framework explains that any harm to the Green Belt attracts substantial weight. Overall, the other considerations raised do not clearly outweigh the harm identified. Therefore, the very special circumstances necessary to justify development in the Green Belt do not exist.
41. As such, the proposal conflicts with TLP policies DP10 and DP13. Therefore, there is a conflict with the development plan as a whole. The proposal also conflicts with the policies in the Framework for the protection of the Green Belt.

Other Matters

42. My attention has been drawn to correspondence between the then applicant, and the Council, whilst the planning application was under consideration. In particular, the appellant highlights inconsistencies between advice given and the formal decision, together with a lack of decision making. This correspondence includes matters such as the need for a flood risk assessment, the weight to be given to the fall-back position, as well as a need for further evidence of the benefits of the scheme. Where this correspondence has led to the submission of additional information, due consideration has been given to this additional information.
43. In the case of flood risk, this has been sufficient to overcome the reason for refusal. In terms of the weight to be given to the fall-back position, this is a

⁴ APP/M3645/W/22/3309334 Land west of Limpsfield Road, Warlingham

matter for the decision maker and my findings in this regard are set out within my above reasoning.

44. Even if I were to accept that the Council had altered its position between the advice given and the final decision, this does not alter the merits of the case and therefore has not been determinative.

Overall Balance and Conclusion

45. Whilst paragraph 11(d) of the Framework is applicable due to the Council's housing supply position, the policies in the Framework that protect the Green Belt provide clear reasons for refusing the development. Paragraph 11(d)(i) sets out that because there are clear reasons for refusing the development, the presumption in favour of sustainable development does not apply. This is different from the Limpsfield Road scheme where it was found that Very Special Circumstances did exist such to justify the development. In that scheme, the Framework's tilted balance at 11(d)(ii) was engaged and the adverse impacts arising from that development were not found to significantly and demonstrably outweigh the benefits.
46. The proposal conflicts with the development plan and the material considerations do not indicate that a decision should be made other than in accordance with it.

R. Lawrence

INSPECTOR