



Appeal Decision

Site visit made on 28 March 2024

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Appeal Ref: APP/T0355/W/23/3327708

Land at Wych Elms, Oakley Green Road, Oakley Green, Berkshire SL4 4QF

- 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 Zain Karbani against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref is 22/03349/FULL.
 - The development proposed is Erection of single-dwellinghouse (infill development).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the appeal was made, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023. I have taken the revised Framework into account as part of the determination of this appeal.

Main Issues

3. The main issues are:
 - whether the proposal would represent inappropriate development in the Green Belt, taking into account the purposes of including land within it;
 - the effect of the proposal on the openness of the Green Belt;
 - Whether the proposal complies with adopted policy having regard to climate change; and
 - If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate Development

4. The appeal site is located within the Green Belt. Paragraph 154 of the Framework states that the construction of new buildings in the Green Belt shall be regarded as inappropriate development. Paragraphs 154 and 155 of the Framework lists a number of exceptions to this. One of the exceptions, criterion e) of paragraph 154, is the limited infilling in villages. This is also reflected in Policy QP5 of the Borough Local Plan 2013-2033 (BLP) (2022).

5. The appeal site lies within Oakley Green. It is a small loose, linear ribbon of development which does not have any recognised settlement limits. It sits between the village of Fifield and the suburban outskirts of Dedworth. The site comprises part of the existing garden of the dwelling known as Wych Elms, which is a substantial detached property in a large plot. The character of the other properties along Oakley Green Road are also generally ones of detached dwellings in large plots, some of which are heavily vegetated.
6. In the absence of any definition of 'limited infilling' in the Framework, I am aware of the Court of Appeal judgement¹ which determined that the village need not be the same as a settlement boundary for the purposes of the Framework, depending on the situation 'on the ground'. Furthermore, whether or not a proposal represents limited infilling is ultimately a matter of planning judgement², having regard to factors such as the number of buildings or properties that are grouped together, their inter-relationship and spacing, and the juxtaposition of the site with surrounding buildings and any open land beyond. The appellant has also drawn my attention to the dictionary definitions of a 'village'.
7. The site of the proposal would be clustered slightly with the nearby properties, positioned between 2 existing dwellings and taking advantage of an 'unusually large gap between Wych Elms and its neighbour to the west'. I also observed the location of the school, church and bus stop. I note that colloquially, this cluster is known as 'Braywood'. Further to the west, separated by predominantly open countryside, there is the Braywood Cricket Club as well as two polo clubs.
8. Even when I stood on the highway to the front of Wych Elms, I did not read the appeal site and its surrounds as a 'village'. Rather than continuous and regular buildings on both sides of the road, 'with equivalent setbacks and spacing', I observed small clusters of dwellings interspersed with fields, stables/farm buildings which still gave the impression of a visual gap and breaks up the built residential form along the road. There is also irregular spacing between buildings, with Wych Elms, Woodville and Oakley Cottage in much larger plots.
9. Furthermore, the ribbon of development along Oakley Green Road is predominately of single depth frontage, and I did not read the presence of the school or church as being a notable 'centre' to Oakley Green. Furthermore, the visibility of the church spire, bus stops and 'School Zone' signage does not necessarily mean that the site is located within a village, rather than simply relating to the ribbon of development along Oakley Green Road. Therefore, given the context of the existing built form along Oakley Green Road, it is my view that the development proposed does not represent limited infilling in a village as envisaged by both the Framework and Policy QP5 of the BLP.
10. The alleged lack of views of the open countryside would not necessarily mean that the appeal site would be considered to be within 'a village'. Whilst the proposal would be of a similar scale and generally respect the loose building line along Oakley Green Road, these matters do not convince me otherwise.

¹ Julian Wood v The Secretary of State for Communities and Local Government and Gravesham Borough Council [2015] EWCA Civ195

² R (Tate) v Northumberland CC (2018) EWCA Civ1519

11. Both parties have drawn my attention to an appeal decision at Kimber's Farm³, which is also situated along Oakley Green Road, approximately 400m to the east. Whilst I have been provided with the decision, I do not have the full details of this proposal before me. However, I note that in this decision, the Inspector concluded that Kimbers Farm was not within a 'village' under the terms of paragraph 154 (e).
12. It is acknowledged that there are differences between the appeal site and that of Kimber's Farm, notably that there are open fields to the south and west of Kimbers Farm. However, I note the Inspector states that 'Kimbers Farm forms part of a loose ribbon of development along Oakley Green Road. This ribbon, which includes a large number of detached suburban type dwellings on large plots, extends over a reasonably long distance, and adjoins other development on the suburban outskirts of Dedworth, the built-up area of which lies to the east'. The appeal site would form part of this ribbon of suburban detached dwellings on large plots. Nevertheless, to my mind, this only emphasises the need for the decision maker to exercise their individual planning judgement, based on the specific circumstances of the scheme before them. I have found the proposal before me now to be unacceptable for the reasons set out above.
13. The appellant has also cited 2 other appeal decisions in their Planning Statement that consider infilling in the Green Belt⁴. These relate to different Councils and whilst I have been provided with the relevant decisions, I do not have the full details before me so I cannot be certain that the circumstances are directly comparable to the appeal scheme. Again, given that a proposed infill development depends on the situation 'on the ground', this only emphasises the need for each appeal to be considered on its own merits.
14. Therefore, the proposal would fail to accord with any of the exceptions set out in Paragraphs 154 or 155 of the Framework. Notably, it would not be limited infilling in villages, as set out in criterion e) of paragraph 154. Consequently, the location and land use of the proposal would represent inappropriate development in the Green Belt, as set out in the Framework. It would also be contrary to Policy QP5 of the BLP which sets out the circumstances where limited infilling in the Green Belt may be acceptable.

Openness

15. A fundamental aim of Green Belt policy, as set out in paragraph 142 of the Framework, is to keep land permanently open. Openness has both a visual and spatial dimension and the absence of visual intrusion does not, in itself, mean that there is no impact on the openness of the Green Belt.
16. The proposed dwelling on to a parcel of land that is currently absent of any built form would inevitably lead to a loss of openness, erasing the visual gap between the existing dwellings on site. It would also be reasonable to expect a more intensive residential use of the land immediately around the proposal, including planting and domestic paraphernalia. These features would also result in an erosion of openness. The proposal would also be visible from the highway to the north. Therefore, the principle of introducing a dwelling would be visually intrusive and thus diminish the openness of the Green Belt.

³ APP/T0355/W/19/3220424

⁴ APP/P1940/W/20/3249107 and APP/X4725/W/20/3252232

17. I acknowledge the definition of 'previously developed land' in the glossary of the Framework, which the appellant alleges that the proposal would fall under. This is because they consider the appeal site to be 'residential curtilage which is not in a 'built-up' area'. I also note the High Court judgement on this matter⁵. Nevertheless, even if I were to find the proposal to be the limited infilling or the partial or complete redevelopment of previously developed land as set out in criterion g) of paragraph 154, in order to not be considered as inappropriate development, the proposal must also not have a greater impact on the openness of the Green Belt than the existing development. The erosion of three-dimensional space arising from the overall size of the building would cause loss of both visual and spatial openness of the Green Belt. The proposal would therefore have a greater impact on the openness of the Green Belt than the existing development.
18. My attention has been drawn to a Certificate of Lawfulness⁶ which was granted for an outbuilding to serve Wych Elms. This would contain a swimming pool, sauna, and gym, and would be sited in a similar position to the proposed dwelling. It is acknowledged that the *Mansell*⁷ Court of Appeal judgement confirms that there should be a "real prospect" of a fallback development being implemented and that the decision-maker should exercise their planning judgment as to whether that would be the case depending on the particular circumstances.
19. A comparison between the consented outbuilding and the proposal has been provided. The outbuilding would be single storey in height, whilst the proposal would be a one and a half storey dwelling, with dormers and rooflights serving the upper floor. Whilst the footprint of the outbuilding would be greater than the proposal, the proposed development would be greater in volume, width, eaves height and ridge height. Furthermore, the granted outbuilding would function and thus interact with its surroundings differently in character terms to that of an independent dwelling with its own access, parking, and curtilage. Therefore, even taking in to account the baseline provided by the fall-back development, the proposal would still have a greater impact on the openness of the Green Belt than the existing development.
20. The proposal would therefore result in the erosion of openness. This would conflict with paragraph 142 of the Framework which identifies openness as an essential characteristic of Green Belts.

Climate Change

21. Policy SP2 of the BLP sets out a range of measures to be incorporated into new developments to ensure that they are designed to adapt to and mitigate climate change. My attention is drawn to the Council's Interim Position Statement on Sustainability and Energy Efficient Design (IPS) (March 2021). The IPS seeks to ensure that new developments deliver on the requirements set out in national and local policy commitments towards climate change and achieve net-zero carbon emissions unless it can be demonstrated this would not be feasible.

⁵ Dartford Borough Council v Secretary of State for Communities and Local Government [2016] EWHC Civ635

⁶ Application reference 23/01713

⁷ Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ1314

22. The appellant prepared an Energy and Sustainability Assessment in support of the planning application. This demonstrated that the new dwelling would achieve a 60% reduction in CO2 over the June 2022 Building Regulations requirement. Furthermore, the proposal will adopt a 'Fabric First' approach, it will include two Electric Vehicle Charging Point, in addition to onsite renewables. These measures exceed the requirements of Policy SP2.
23. Nonetheless, I note that the IPS requires all new development to achieve net zero emissions unless demonstrated to be unfeasible. It continues to state that the net-zero carbon outcome should be achieved on-site. Where it is demonstrated that it cannot be fully achieved on-site, any shortfall may be provided through a contribution to the Council's Carbon Offset Fund which will be ring fenced to secure delivery of greenhouse gas reductions elsewhere. Concerns have therefore been raised by the Council that the proposal has not achieved net zero nor has it secured contributions to the Carbon Offset Fund as set out in the IPS.
24. However, this requirement is not set out in Policy SP2, as it does not expressly set any specific targets for carbon reduction. The IPS is not, in itself, part of the Development Plan and has not been subject to independent examination. Furthermore, criterion 3 of Policy SP2 refers to other documents that applicants should refer to, but the IPS is not one of these. The Council state that the IPS remains a material consideration as it is linked with the Environment and Climate Strategy 2020 which is subsequently linked with Policy SP2. However, I have not been provided with a copy of the Environment and Climate Strategy and this is not referred to in the relevant reason for refusal. As such, based on the evidence before me now, I can only afford the objectives of the IPS limited weight in my decision.
25. Both parties have referred me to earlier appeal decisions to support their stance on this matter. However, I do not have full details of these proposals before me in order to draw any direct comparisons. Each proposal must be considered on its own merits, and I have found the proposal to be acceptable for the reasons set out above.
26. Therefore, I do not find the failure of the proposal to be net-zero nor the lack of contribution sufficient to result in conflict with Policy SP2 of the BLP. I am satisfied that the proposal would comply with adopted policy having regard to climate change. It would comply with paragraphs 7 and 8, and chapter 14 of the Framework and Policy SP2 of the BLP, which, in combination, seek to encourage developments to be built to mitigate climate change and to incorporate low carbon and efficient energy sources.

Other Considerations

27. Paragraph 153 of the Framework states that substantial weight should be given to any harm to the Green Belt and that 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. I turn now to address other considerations that, potentially, might clearly outweigh harm arising from inappropriate development in the Green Belt, and the other harm I have identified above, so as to provide the very special circumstances required to justify a grant of planning permission.

28. The development would provide a dwelling in an area where the Council is unable to demonstrate a five-year housing land supply. However, I have found that the proposal would be inappropriate development in the Green Belt. Therefore, this is a situation in terms of paragraph 11(d)(i) of the Framework, where the presumption in favour of sustainable development is not engaged because the application of the policies in the Framework that protect land designated as Green Belt⁸ provides a clear reason for refusing the development proposed.
29. Nevertheless, there would be some social and environmental benefits associated with the provision of the new dwelling, including economic benefits in employment during the construction phase and support for local businesses. The appeal scheme also delivers a Biodiversity Net Gain of 13%. Together these benefits carry moderate weight in favour of the development.
30. Furthermore, the proposal would be for a self-build dwelling. The appellant is on the Council's Self-Build Register and intends to build his own home, next door to his family. This would meet the objective of the Framework to support the delivery of sites to meet the needs of groups with specific housing requirements. This includes for those people wishing to commission or build their own homes. The Council has acknowledged the demand for self-build plots. They have not disputed the delivery figures presented by the appellant or the fact that there are currently no self-build plots available in the Borough.
31. The appellant has drawn my attention to linked appeal decisions at Sturt Green⁹, which were also within the Green Belt. The Inspector found that due to the lack of self-build and custom housing (SBCH) 'against a very substantial and acknowledged shortfall, the proposals for four SBCH plots..... must merit very significant favourable weight in the planning balance'. The provision of SBCH was considered 'over-riding' and the appeal was subsequently allowed. However, although I have the appeal decisions, I do not have the full details of these proposals before me. I note that these other appeal decisions related to 4 self-build plots, as opposed to the 1 self-build plot before me now. I do not consider that these decisions in themselves, in regard to self-build, would be a carte blanche to allow other developments in otherwise inappropriate locations. Nevertheless, I acknowledge that the scheme would deliver a self-build dwelling, which would afford moderate weight in support of the proposal.

Other Matters

32. I note the feedback given by the Council as part of the pre-application advice in July 2022. Nevertheless, at appeal the proposal is considered afresh, and any feedback received as part of these discussions would not warrant allowing the appeal, given the harm that I have identified above.
33. The letters of support from interested parties are also noted. However, they do not overcome the harm that would be caused by the proposal.

Conclusion

34. I have identified that the scheme would be inappropriate development in the Green Belt as defined by the Framework. The proposal has harmful implications

⁸ Framework paragraph 11 d), footnote 7

⁹ APP/T0355/W/22/3309281 and APP/T0355/W/23/3314990

for the Green Belt in terms of inappropriate development and the erosion of the openness to which I give substantial weight.

35. Overall, I give moderate weight to the other considerations cited in support of the proposal outlined above. I therefore find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. As such, the proposal would be contrary to the Framework, which seeks to protect the Green Belt from inappropriate development.
36. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Laura Cuthbert

INSPECTOR