The Planning Inspectorate

Appeal Decisions

Site visit made on 23 April 2024

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th May 2024

Appeal A Ref: APP/H2265/W/23/3330990
Gatehouse Nursery, Coldharbour Lane, Hildenborough, Tonbridge, Kent TN11 9LE

- 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 J Barton (Amberley Homes) against the decision of Tonbridge and Malling Borough Council.
- The application Ref is TM/23/00378/OA.
- The development proposed is the clearance of existing nursery buildings and polytunnels and erection of four detached dwellings (phased for self-build delivery).

Appeal B Ref: APP/H2265/W/23/3330991
Gatehouse Nursery, Coldharbour Lane, Hildenborough, Tonbridge, Kent TN11 9LE

- 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 J Barton (Amberley Homes) against the decision of Tonbridge and Malling Borough Council.
- The application Ref is TM/23/01384/FL.
- The development proposed is the clearance of existing former nursery buildings and polytunnels and erection of two dwellings.

Decision

1. Both appeal A and appeal B are dismissed.

Preliminary Matters

2. As set out above there are two appeals on this site. They differ in the number of dwellings proposed and the level of detail submitted. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

3. The planning application form submitted for appeal A seeks outline planning permission with all matters (appearance, landscaping, layout and scale), except access, reserved for future consideration. As such I have treated the submitted appeal plans relating to any of the reserved matters as being for illustrative purposes only.

Main Issues

4. The main issues in both appeal A and B are:

    - whether the proposal would be inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (the 'Framework') and relevant development plan policies; and

- would the harm by reason of inappropriateness and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

5. The main issues in appeal A only are:

- the effect of the proposed development on the character and appearance of the surrounding area; and
- the effect of the proposed development on biodiversity.

Reasons

Whether it is inappropriate development

6. The appeal site is occupied by several polytunnels and a timber building which are currently unused and in poor condition. However, it has been stated that the site was previously used as a horticultural nursery with a retail aspect. It is located at the end of Coldharbour Lane alongside several residential properties and a hospital. It is also within the Green Belt. The proposed development would remove the existing structures on the appeal site and replace them with either four dwellings (appeal A) or two dwellings (appeal B).

7. Paragraph 154 of the Framework states that the construction of new buildings in the Green Belt is inappropriate subject to a number of exceptions. Under paragraph 154(g) these exceptions include limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continued use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development. Policy CP3 of the Tonbridge and Malling Borough Council Core Strategy (the CS) 2007 states that national green belt policy will be applied and therefore is generally consistent with the Framework. The appellant has stated that the appeal site is previously developed land and the proposals would therefore fall under the exception in paragraph 154(g).

8. In considering the concept of openness, the courts have found that it broadly has two dimensions; spatial and visual. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. Equally this does not mean that the openness of the Green Belt has no visual dimension.

9. Both proposals in appeal A and appeal B would result in the reduction in the footprint and volume of development on the appeal site. As such the proposed development in both appeals would have no spatial impact on the openness of the Green Belt.

10. However, for appeal A the indicative plan shows that the proposed development would be spread further around the site, outside of the footprint of the existing development, including built form further to the west than at present. Furthermore, whilst permanent structures, the existing polytunnels are more open and translucent than the four proposed dwellings, which are constructed of solid and opaque brickwork and stone masonry. Whilst the appeal site is self-contained and screened from wider views, the proposed development would be visible from the entrance on Coldharbour Lane and to visitors to the site. For these reasons, the proposal in appeal A would have a greater impact on the visual openness of the Green Belt.

11. The proposed development in appeal B would largely replicate the location of the existing built form on the site. However, it would also replace the existing polytunnels with dwellings of a solid construction, finished with brick and timber/metal cladding. Whilst the impact of only two dwellings may be limited, openness would still not be preserved and therefore the proposal in appeal B would also have a greater impact on the visual openness of the Green Belt.

12. Previously developed land is described in the Framework as land which is or was occupied by a permanent structure including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes land that is or was last occupied by agricultural or forestry buildings.

13. In Section 336(1) of the Town and Country Planning Act 1990, 'agriculture' includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly.

14. As the appeal site contains buildings previously used in connection with horticulture, under the above definition, these would be considered agricultural buildings. It is noted that the appeal site also had a retail use, with evidence provided by the appellant showing road signs and internet advertising for the retail business. However, it has not been demonstrated that this retail use was more than ancillary to the horticultural nursery or if this use occupied any of the permanent structures on the site. A refused planning application for a coffee shop and WC facilities on the appeal site may highlight that the business intended to invest further in the retail element of the site. However, again, this does not demonstrate that the existing buildings on the site were not agricultural buildings.

15. Nevertheless, even if the site could be considered previously developed land, due to the impacts on the openness of the Green Belt detailed above, the proposed development would not fall under the exception in paragraph 154(g).

16. The proposal would therefore be inappropriate development within the Green Belt. This would be harmful to the Green Belt which, in accordance with paragraph 153 of the Framework, should be given substantial weight. Development should not be approved unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations, which will be considered below.

Character and Appearance (appeal A only)

17. In appeal A, appearance, landscaping, layout and scale are matters reserved for future consideration. However, an indicative site layout plan has been submitted showing the possible arrangement of the four proposed dwellings on the site with an indicative elevation plan showing four single storey dwellings.

18. The other dwellings located on Coldharbour Lane have an informal layout with the dwellings set on large, spacious plots. From the indicative plans, the proposed dwellings would be on much smaller plots, located closer together in a cul-de-sac fashion. However, due to the scale of the site, the low number of

dwellings proposed and the rural surrounds, the layout would still be relatively informal and would not appear overly suburban. Therefore, regardless of the final layout and design, the proposed dwellings would not conflict with the prevailing character of development in the area.

19. As such, the proposed development in appeal A would not harm the character and appearance of the surrounding area and would not conflict with Policy CP24 of the CS or Policy SQ1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document (the DPD) 2010. These policies collectively seek to ensure that development is well designed and must, through its layout and siting, be designed to respect the site and its surroundings, protecting the character and local distinctiveness of the area. It would also comply with the general design objectives of the Framework.

Biodiversity (appeal A only)

20. For appeal A, the Council's Biodiversity Officer raised concerns in relation to the information submitted to confirm that protected species on the site would not be harmed and that there would be no adverse effect on the biodiversity. Therefore, as the impact could not be sufficiently determined, this was included as a reason for refusal. However, in appeal B, an Ecological Impact Assessment and a Great Crested Newt District Level Licensing Impact Assessment and Conservation Payment Certificate (an IACPC) were submitted and found to be acceptable by the Council. This was subject to various conditions relating to a biodiversity mitigation and enhancement strategy, a landscaping plan, a landscape and ecological management plan and external lighting. As such, these two documents have also been submitted alongside appeal A.

21. Whilst the scope of development is different between the two appeals, the differences are minimal and therefore the assessments submitted are largely relevant to both appeals. The submitted Ecological Impact Assessment indicates that whilst the proposed development would be anticipated to have, at most, significant adverse effects on biodiversity at a local level, avoidance, mitigation and compensation measures could be successfully implemented and adhered to, to overcome this harm. I am satisfied that these measures could be secured by condition should planning permission be granted.

22. Therefore, subject to conditions, the proposed development in appeal A would not have a harmful impact on biodiversity within the site and would comply with Policy NE3 of the DPD. This policy seeks to ensure that development that would adversely affect biodiversity will only be permitted if appropriate mitigation and/or compensation measures are provided which would result in an overall enhancement. It would also accord with the objectives of the Framework in relation to the natural environment.

Other Considerations

23. The proposed dwellings would contribute to the housing supply in the area with either two or four new family dwellings. However, due to the scale of both proposals, this is only a small contribution to the housing supply which is given only limited weight. The Council currently have a significant shortfall in the housing land supply, with only a 3.69 year supply, and are failing to meet their Housing Delivery Test. Therefore, the test in paragraph 11(d) of the Framework should be applied.

24. However, while the framework advocates granting planning permission where there are no relevant development plan policies, this is unless, in accordance with paragraph 11(d)(i), the application of policies in this Framework that protect areas or assets of particular importance provide a clear reason for refusing the development. The harm to the Green Belt identified is such that the policies in the Framework relating to the Green Belt provide that clear reason for refusing both developments. As a result, the presumption in favour of sustainable development does not apply and does not weigh in favour of the two proposals.

25. The proposed developments would provide either two or four plots for self-build and custom housebuilding. Paragraph 70(b) of the Framework supports small sites to come forward for self-build and custom-build housing. The appellant has identified that there is an unmet need in the region of 195 plots within the Borough. Therefore, the proposed development would make a contribution to addressing the current shortfall in provision. However, due to the scale of the development with only two or four plots for self-build and custom housebuilding. This contribution is limited and therefore is afforded moderate weight in my consideration of the appeals.

26. It is noted that the appeal site is redundant and overgrown, with the buildings in poor condition. The proposal intends to improve the visual quality of the site with enhanced boundaries and a wildflower meadow in the northern most part of the site to increase ecological and biodiversity value. However, there is no evidence to suggest that these improvements could only be achieved through either of the developments proposed. Therefore, this is given limited weight.

27. The appellant has also highlighted the economic benefits of the proposed dwellings, including the viability of the rural economy, through the spending power of future residents, and payments in relation to planning obligations. The future occupiers of the proposed dwellings would also support the social vitality of the rural community. However, again, due to the scale of the proposed development, these benefits would be limited and are given moderate weight in favour of the proposal.

28. The appellant considers the proposals to be a high quality, attractive design which would not harm the character and appearance of the site or the surrounding area. However, this lack of harm is a neutral factor which would not weigh for or against the proposed development.

Green Belt Balance

29. The proposals in both appeal A and appeal B would be inappropriate development in the Green Belt in that it would result in new buildings within the Green Belt which do not fall under any of the listed exceptions. The Framework establishes that substantial weight should be given to any harm to the Green Belt, and the development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.

30. I find that the other considerations in this case do not clearly outweigh the harm to the Green Belt, in terms of a loss to openness and inappropriateness that I have identified. Consequently, the very special circumstances necessary to justify the development in the Green Belt do not exist. Therefore, the

development in both appeals conflicts with Policy CP3 of the CS which seeks to protect the Green Belt, along with paragraphs 152, 153 and 154 of the Framework.

Other Matters

31. It has been highlighted that the appeal site is located adjacent to a grade II listed building, St Raphael Medical Centre, on the west side of Coldharbour Lane. Limited information has been submitted regarding this building. However, it appears that its significance is derived, at least in part, from its historic nature as a substantial country house converted into a private medical centre and from its status as a well-preserved example of its age and type. The open and rural surroundings contribute to how this asset is appreciated and this setting makes a positive contribution to the significance of this listed building.

32. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in considering whether to grant planning permission for the development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest. The Council have not raised any concerns in relation to the impact of the proposed developments on this listed building. Whilst the appeal site is in close proximity to this listed building and its surrounds, the two are visually separate and well screened from each other by well-established landscaping. As such, the proposed developments in both appeals would have a neutral impact on the setting and significance of this listed building.

Conclusion

33. However, for the reasons given above, I conclude that appeal A and appeal B should be dismissed.

E Grierson

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/H2265/W/23/3330990	Mr J Barton (Amberley Homes)
Appeal B	APP/H2265/W/23/3330991	Mr J Barton (Amberley Homes)