



Appeal Decision

Site visit made on 21 May 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2024

Appeal Ref: APP/G2245/W/23/3335624

Land to Rear of and No.5a Noah's Ark, Kemsing, Sevenoaks TN15 6PA

- 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 Site Trader UK Ltd against the decision of Sevenoaks District Council.
 - The application Ref is 23/01754/FUL.
 - The development proposed is described as the demolition of existing buildings and erection of 7 dwellings with associated access, parking and landscaping (resubmission of 22/0368/FUL).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published by the Government on 19 December and updated on 20 December 2023 and accompanied by a written ministerial statement (WMS). I have familiarised myself with the content of the revised Framework and the accompanying WMS and none of the revisions to the Framework would be material to this appeal. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework. Any references to the Framework hereafter in this decision are to the latest version.

Main Issues

3. The main issues are:
 - Whether the proposal is inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies and its effect on the openness of the Green Belt; 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.

Reasons

Whether inappropriate development

4. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence. Policies LO 1 and LO 8 of the Sevenoaks District Council Core Strategy (SCS) adopted

February 2011, cumulatively seek to maintain the extent of the Green Belt and highlight that development will only take place where it is compatible with policies for protecting the Green Belt. As such, the policies are generally consistent with the Framework.

5. Paragraph 154 of the Framework states that the construction of new buildings in the Green Belt is inappropriate subject to a number of exceptions. In this particular case the appellant cites criteria e) limited infill in villages and g) limited infilling or the partial or complete redevelopment of previously developed land (PDL), providing that it would not have a greater impact on the openness of the Green Belt than the existing development, as the exceptions of paragraph 154 that are the most relevant in this particular case. I shall deal with these in turn.
6. The first test is establishing whether the appeal site is located within a village. Both parties acknowledge that the proposal is located outside the settlement boundary of Kemsing, as designated by the development plan, however this is not definitive. 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'.
7. The proposal is located in a back land position behind an established row of residential properties in the mainly residential settlement known as Noah's Ark. This area contains limited facilities, however it is acknowledged that the site is within walking distance of local shops and services situated in the village of Kemsing. Nevertheless, Noah's Ark is located a significant distance to the south of Kemsing and visibly separated by the M26 which runs between these two areas, providing a distinct break and segregating the settlements.
8. Noah's Ark is visually separated in the north and south by the M26 and a railway line respectively. This separation, particularly from Kemsing provides a more peripheral nature to the appeal site. The areas to the east and west of Noah's Ark are distinctly more verdant and relatively open areas, with fields and some views of the wider countryside. The more spacious appearance provides an important break in the built development, giving a sense of leaving the village of Kemsing, as the character changes, feeling appreciably more rural. Consequently, the proposals' location could not reasonably be described as representing a village setting.
9. I have noted the Councils definition of limited infill² and also the recent appeal decision³ highlighted by the appellant. Here an Inspector concluded that a proposed development would constitute limited infilling in a village. However, I am not aware of the full circumstances nor the setting of this appeal site, such that I can be certain that its directly comparable with the appeal before me. Nonetheless, I do not need to consider whether or not the proposal would be considered limited infilling, as it is not within a village and would therefore not meet the exception set out in paragraph 154 e) of the Framework.
10. The Framework defines PDL, as land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. Both parties agree that the proposal would

¹ Wood v Secretary of State for Communities and Local Government [2014] EWHC 683 (Admin)

² Sevenoaks District Council - Development in the Green Belt SPD, adopted February 2015

³ PINS Ref: APP/G2245/W/22/3312527

represent PDL. Therefore, whether the proposal would involve the partial or complete redevelopment of PDL as set out at paragraph 154 g) of the Framework is a consideration. The second limb of paragraph 154 g) requires any redevelopment of such land to not have a greater impact on openness than the existing development.

11. Case Law⁴ has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. 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. But equally this does not mean that the openness of the Green Belt has no visual dimension.
12. In spatial terms the proposal would introduce a substantial increase in the quantum of residential development. In terms of footprint the appellant highlights that the overall area of the proposal would increase from 310m² to 419m² (35%) with the volume increasing from 1,207m³ to 2,502m³ (107%). Furthermore, the proposal would be taller in height and wider than the existing building. Therefore, the introduction of built form, as proposed, would have an adverse impact on the openness of the Green Belt in spatial terms.
13. In regard to the visual aspect, the existing site is a back land location sited amongst other buildings and existing residential properties located within the settlement of Noah's Ark, and it is within this context that the proposal should be assessed. It is acknowledged that the proposal has been well designed, incorporating renewable energy measures. Also, whilst being two storeys, the properties have been designed with the upper floor windows at eaves level and the living space contained within the roof slope in order to appear in keeping with the existing modest built form of development within the area, whilst still maintaining residential space standards.
14. Despite being located amongst the existing development, there would be limited glimpse views of the proposal from public vantage points along the roadside of Noah's Ark, notwithstanding the intervening boundary fences and existing properties. Nevertheless, given its context I conclude in visual terms, that the proposal would have no significant effect on the visual aspect of the openness of the Green Belt. Whilst I find there would be no harm to the visual dimension of the openness of the Green Belt, there would be to the spatial dimension. Therefore, the proposal would have a greater impact on the openness of the Green Belt than the existing development.
15. Bringing these strands together, the development would therefore constitute inappropriate development in the Green Belt, which paragraph 152 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Other considerations

16. The proposal would provide seven new houses, making a positive contribution to the housing supply within the Sevenoaks District, where the Council acknowledges that it is unable to demonstrate a four-year supply of deliverable housing land. Furthermore, given its relatively modest size, the proposal could be built out fairly quickly. As such, this would attract significant weight.

⁴ Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466

17. I note the environmental health complaints from neighbouring residents in relation to the existing commercial operations on the site. However, I have not been supplied with substantive information in respect to any restrictive conditions that would assist in mitigating these concerns. Nevertheless, I would acknowledge that the proposal would provide a more appropriate form of development within the predominately residential area, to which I apportion modest weight.
18. The proposal would also result in some small social and economic benefits, including the support future occupiers would give to local businesses and services. The proposal also benefits from well-designed sufficiently sized units which include eco-friendly enhancements. To these benefits I apportion modest weight given the limited scale and nature of the proposed development.
19. The scheme would deliver biodiversity enhancements in excess of either local or national policy requirements, amounting to a Biodiversity Net Gain of 20%. Nevertheless, the modest size of the appeal site means that the gains would be limited in actual terms. Consequently, this would provide only a modest benefit of the scheme.
20. The appellant has drawn my attention to a Committee Report⁵ which granted planning permission in the Green Belt, and also appeals⁶ which have been allowed in respect to other developments, albeit these schemes were significantly larger in density. Based on the limited information before me, it is evident that they turned on their own particular merits. I therefore give these examples limited weight, as I cannot be certain that they are directly comparable. In any event, each case must be judged on its own merits, and I must determine the appeal on the merits of the case before me.
21. The appellant also highlights that several letters of support have been received for the proposal. Whilst these considerations are important, nevertheless, these representations do not overcome the harm I have found in this case.
22. For these reasons, I find that the other considerations in this case, as set out above, do not individually or cumulatively outweigh the totality of the harm to the Green Belt that I have identified. Consequently, the very special circumstances necessary to justify the proposal do not exist.

Green Belt balance and conclusion

23. The proposal would be inappropriate development in the Green Belt. The Framework establishes that substantial weight should be given to any harm to the Green Belt, and development should not be approved except in very special circumstances. In addition, I have found that the scheme would also have a greater impact on the openness of the Green Belt than the existing development. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
24. The other considerations are not of sufficient weight to amount to the very special circumstances necessary to justify the proposal. There are no material considerations that indicate that the appeal should be determined other than in accordance with the Green Belt provisions of the Framework and the development plan.

⁵ Sevenoaks District Council Planning Ref: 22/00512/OUT

⁶ PINS Refs: APP/V1505/W/22/3298599 and APP/V1505/W/22/3296116

25. For the reasons above, I therefore conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR