



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: 13 June 2024

Appeal Ref: APP/G2245/W/23/3335659

Land Between Lowlands And Council Cottages , High Street, Seal, Kent, TN15 0AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Biffa Waste Services Limited against the decision of Sevenoaks District Council.
 - The application Ref is 23/01399/PIP.
 - The development proposed is the erection of dwellings with a minimum of 1 or maximum of 5 net dwellings and associated and ancillary works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 22 November 2023, all designated Areas of Outstanding Natural Beauty (AONBs) in England and Wales became "National Landscapes". AONBs have been renamed and rebranded as National Landscapes to reflect *"their national importance: the vital contribution they make to protect the nation from the threats of climate change, nature depletion and the wellbeing crisis, whilst also creating greater understanding and awareness for the work that they do"*. and I have therefore replaced references to AONBs to National Landscapes.
3. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published, however the changes do not materially alter the sections of the Framework most relevant to this appeal. Any references to the Framework hereafter in this decision are to the latest version.
4. The proposal is for permission in principle. National Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or permission in principle (PIP)) establishes whether a site is suitable in-principle and the second (technical details consent (TDC)) is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
5. The scope of the considerations for PIP is limited to location, land use and the amount of development permitted¹. All other matters are considered as part of a subsequent TDC application if PIP is granted. I have determined the appeal accordingly.

¹ PPG Paragraph: 012 Reference ID: 58-012-20180615

6. In respect of residential development, an applicant can apply for PIP for a range of dwellings by expressing a minimum and maximum number of net dwellings as part of the application. In this instance, the PIP has been sought for the erection of a minimum of one and a maximum of five dwellings at the appeal site. The appellant has submitted an indicative site layout which shows, amongst other things, the proposed development area, the indicative positions of proposed dwellings and footprints, open space, and access to each unit. For the avoidance of doubt, I have determined the appeal on that basis, having regard to the requirements of the above referenced Order and the PPG.

Main Issues

7. 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 and its effect on the openness of the Green Belt;
- The effect of the proposal on the character and appearance of the surrounding area including the Kent Downs National Landscape; 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 to justify it.

Reasons

Whether inappropriate development

8. The Framework identifies 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. It goes on to state that 'inappropriate development' in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
9. Policy LO 8 of the Sevenoaks District Council Core Strategy (SCS) adopted February 2011, states the extent of the Green Belt will be maintained and development will only be supported where it is compatible with policies for protecting the Green Belt. As such, the policies are generally consistent with the Framework.
10. 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. I have not been provided with a village boundary as defined on a proposals map, however this should not be determinative, and case law indicates that a planning judgement needs to be made to the extent of the village on the ground². This would include the location of the site itself, and also its relationship to other existing development in the nearby vicinity.
11. The appeal site consists of an area of relatively open and verdant land fronting High Street, located between the settlements of Seal to the east and Sevenoaks to the west. To the west of the site are large predominantly detached residential units, located beyond boundaries consisting of trees and

² Wood v Secretary of State for Communities and Local Government [2014] EWHC 683 (Admin)

vegetation, providing a distinct screen. Opposite these properties is a large secondary school as one moves towards the larger and significantly denser settlement of Sevenoaks. The appeal site would therefore occupy a more peripheral location in respect to this settlement.

12. To the east of the site is the village of Seal. The development here is looser and more sporadic with smaller green spaces such as the appeal site and the Seal recreational ground. These areas provide an important respite, as one approaches the more commercial area along the High Street, Church Street and Park Lane in Seal. Again, the appeal site would be seen within the periphery of this village area.
13. Given its location between the two settlements, the appeal site provides a functional green cushion, preventing further crawl or the merging of these settlements, echoing the sentiments of paragraph 143 of the Framework. Whilst I acknowledged that the site is located within walking distance of shops and services, given its outlying nature on the outskirts of both Sevenoaks and Seal, its verdant appearance and buffering function I do not consider that it could reasonably be described as representing a village setting. Consequently, the proposal would not meet the exception set out in paragraph 154 e) of the Framework.
14. I have noted the Council's definition of limited infill³, however 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.
15. The appellant also cites criterion g) of paragraph 154 as relevant to this appeal. Paragraph 154 g) relates to 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 or would not cause substantial harm to openness if contributing to an identified affordable housing need.
16. The Framework defines PDL, 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 surface infrastructure. The definition excludes land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures.
17. The appellant owns the appeal site (area A) shown on the red line plan and a larger section of land (area B), shown in the blue line plan as former sand and gravel extraction pits⁴. Both parties agree that area A was part of a former sand pit, with the appellant indicating it was later infilled with only non-toxic construction waste. Thus, the appeal site would be considered as both minerals extraction and waste disposal by landfill for the purposes of PDL. However, the parties dispute whether the site has been fully restored.
18. The evidence before me is limited in respect to the planning history associated with the site. The ERD report provides photographic evidence highlighting sand extraction being undertaken as early as 1946 in area A, although this area

³ Sevenoaks District Council - Development in the Green Belt SPD, adopted February 2015

⁴ Environmental Conditions Report prepared by ERD dated April 2023

would have been filled prior to area B as the report confirms its use as part of a wheel wash and turning area for vehicles entering area B. The ERD report further states all waste licenses were surrendered in the 1980's, and area B was completed to the local authority requirements of that time, providing inert fill, and removing large debris. Area A would have been completed prior to area B, given its use for wheel washing and turning for the larger site, and thus would have been subject to the same rudimentary restoration requirements. The aerial photo taken in 1990 shows both areas as restored open green fields. Based on the evidence before me I would conclude that the site has been restored and would therefore not be considered as PDL as defined in the Framework.

19. Even if I were to conclude that the site was PDL, 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 or where the development would contribute to meeting an identified affordable housing need, would not cause substantial harm to the openness of the Green Belt.
20. The PPG states that it is not possible for planning obligations to be secured against a grant of PIP⁵. Nevertheless, there is no legal reason why an obligation cannot be entered into at any time. The appellant has provided an obligation alongside the appeal that would secure a 20% affordable housing contribution in accordance with the Councils Affordable Housing Supplementary Planning Document, to meet with an identified need.
21. As such it is necessary to consider whether substantial harm would occur to the openness of the Green Belt. Case Law⁶ has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. In spatial terms the proposal would introduce a substantial increase in the quantum of residential development on to a site which is generally open and free from any significant permanent development. Therefore, the introduction of built form, as proposed, would have an adverse impact on the openness of the Green Belt in spatial terms.
22. From a visual perspective the site is well hidden from most public vantage points given the extensive and established vegetation along the roadside boundary providing a good screen and a more secluded position of the appeal site. The submitted statement on the Landscape and Visual Issues⁷ (LVI), confirms that the site would be positioned in a relatively discrete position, with limited public views from the surrounding areas.
23. The Zone of Theoretical Visibility set out within the LVI shows that the proposal would be contained within the site it is to be located and not intrusive in the wider area. There would also be only limited views experienced from the 11 identified viewpoints providing a localised and negligible to minor adverse visual impact.
24. Whilst the limited views and screening would result in a negligible visual impact on openness, nevertheless I have found that the proposal would result in an increased quantum of development, and thus harms the spatial dimension of openness leading to an encroachment of the countryside. Overall, I find that

⁵ Paragraph: 022 Reference ID: 58-022-20180615

⁶ Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466

⁷ Appeal Statement of Mark Flatman: Landscape and Visual Issues dated December 2023 Ref 2573A2

the proposal would substantially harm the openness of the Green Belt and would therefore conflict with the fundamental aim of Green Belt Policy, as set out above.

25. 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.

Character and appearance

26. Paragraph 182 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs (National Landscapes) which has the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas. SCS Policy LO 8 and Policy EN5 of the Sevenoaks District Council Allocations and Development Management Plan (DMP) adopted February 2015 applies similar principles for protecting and enhancing these settings where possible.
27. The LVI highlights the appeal site is located within the landscape character type Greensand Parks and Farmlands, specifically 9b: Seal Parks and Farmlands, as identified within the Sevenoaks District Council Landscape Character Assessment. The key characteristics of this area are enclosed fields with small, scattered settlement patterns, with the objectives to conserve the wooded character and maintain the historical field patterns and rural settlements. The LVI found that the proposed site does not perform well against the landscape character objectives and contains few characteristics of the landscape and scenic beauty of the Kent Downs National Landscape. Also given the general screening of the site, this restricts the public vantage points from which the appeal site can be viewed.
28. I have been provided with limited evidence from the Council to counter the findings of the LVI, and I consider there would be minimal visibility of the appeal site from outside the appellant's land. However, given that the application is a PIP and that the TDC matters are effectively reserved, the details of landscape and design would be secured at the TDC stage, and it is the principle of between one and five dwellinghouses in the existing landscape that I am considering here.
29. As such, there is a degree of uncertainty as to the overall effect the proposal would have on the character and appearance of the area and the National Landscape. Therefore taking a precautionary approach I am unable to conclude that the proposed development would not result in harm to the landscape and scenic beauty of the National Landscape which DMP Policy EN5, SCS Policy LO 8 or paragraph 182 of the Framework seek to protect and enhance, and where great weight should be given to conserving and enhancing landscape and scenic beauty within National Landscapes, areas that are given the highest status of protection.

Other considerations

30. It is common ground between the Council and the appellant that the proposal would be beneficial in terms of meeting the wider housing needs of Sevenoaks. The appeal scheme would provide a small windfall development of between one and five dwellings that would make a modest contribution to the Council's housing undersupply, albeit more important given that the Council is unable to demonstrate a suitable supply of deliverable housing sites. As such, this attracts significant weight in favour of the development.
31. I accept that government policy is supportive of self-build housing, with the PPG highlighting that authorities must give permission to enough suitable serviced plots to meet the demand for self-build and custom built housing in the area⁸. Furthermore, the proposal would add to the choice and mix of housing in the local area, in line with footnote 29 of the Framework. I also note the policy support that central government gives to self-build housing, such as through the Self-build and Custom Housebuilding Regulations 2015.
32. Whilst this matter weighs in favour of the proposal, the information before me to support the fact that it would be a genuine self-build proposal is limited, and there is no mechanism, such as a legal agreement, that would ensure that it is delivered as a genuine self-build development. I therefore give this matter limited weight.
33. The proposed development would offer other benefits such as the contribution that its construction would make to the local economy. I consider that any such benefits would be limited given the scale of the development and I have given this modest weight.
34. 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.

Conclusion

35. The proposal would constitute inappropriate development in the terms set out by the Framework and would result in harm to the openness of the Green Belt. The Framework requires that substantial weight should be given to any harm to the Green Belt. The development is therefore contrary to the above cited policies of both the development plan and the Framework.
36. Due to the limited information available with the PIP route, I have been unable to find that the proposal would minimise adverse effects on the landscape or would not therefore harm the character and appearance of the landscape or scenic beauty of the National Landscape.
37. It is common ground that the Council is currently unable to demonstrate an appropriate supply of deliverable housing sites and therefore the policies most important for determining the application are considered to be out-of-date. However, as I have found harm to the Green Belt, paragraph 11.d) i. of the Framework applies and, therefore, the application of policies in relation to the protection of the Green Belt provide a clear reason for refusing the

⁸ Paragraph: 023 Reference ID: 57-023-201760728

development. Accordingly, the presumption in favour of sustainable development does not apply.

38. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

Robert Naylor

INSPECTOR