



Appeal Decision

Site visit made on 10 April 2024

by C Billings BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2024

Appeal Ref: APP/A0665/W/23/3332222

Land at Dark Lane, Kingsley, Frodsham, Cheshire WA6 8BN

- 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 McGovern against the decision of Cheshire West and Chester Council.
 - The application Ref is 21/04516/FUL.
 - The development proposed is for 1no. 4 bedroom two storey self-build dwelling and outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As no site address was provided on the original application form, that in the banner heading has been taken from the appeal form.
3. A revised National Planning Policy Framework (the Framework) was published in December 2023 and so is a material consideration. The parties had opportunity to comment on the revised Framework in their submissions. I have therefore taken into account the revised Framework in reaching my decision.
4. The appellants sought that the appeal be determined by way of a Hearing. However, having considered the evidence before me, including in respect of housing supply, self-build plots, weight, and other representations, I am satisfied that the appeal can appropriately be determined by written representations. The appellants submitted a draft Agreed Statement of Common Ground with the appeal. As the content was not agreed by the Council, I have not assumed that it represents an agreed position between the main parties.

Site Context and Main Issues

5. The appeal site comprises a portion of undeveloped paddock along Dark Lane and parts of the rear gardens of Numbers 52 and 54 Top Road, Kingsley. The appeal site is located outside of, the 'local service centre' settlement boundary of Kingsley and is washed over by the North Cheshire Green Belt. Part of the appeal site also falls within the boundaries of the Kingsley Conservation Area.
6. Bearing in mind this context, and the statutory duties under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I consider the main issues in this appeal are:

- whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies;
- the effect of the proposal on the openness of the Green Belt;
- the effect of the proposed development on the character and appearance of the area, including its effect on the Kingsley Conservation Area (CA);
- whether the appeal site offers a suitable location for the proposed development having regard to the development plan policies that support sustainable development and limit housing in the countryside; and,
- whether the harm by reason of inappropriateness and any other harm, would be clearly outweighed by other considerations so as to amount to very special circumstances necessary to justify the proposed development.

Reasons

Inappropriate Development in the Green Belt

7. The proposal would involve the erection of a detached dwelling, outbuilding, associated access, and landscaping on undeveloped greenfield and garden land. Paragraph 154 of the Framework indicates that the construction of new buildings should be regarded as inappropriate in the Green Belt, subject to certain exceptions, including at paragraph 154 (e), limited infilling in villages.
8. Policy STRAT 9 of the Cheshire West and Chester Local Plan (Part One) Strategic Policies (LP1) indicates that in settlements and areas of the countryside that are within the Green Belt, additional restrictions will apply to development in line with the Framework. The explanatory text to this policy includes 'limited infilling in villages' as an exception. There is no definition of what constitutes 'infilling' in the Framework. While the appeal site is not within a key or local service centre, the explanatory text for LP1 Policy STRAT 8 indicates 'infill' to be the 'filling of a small gap, up to two dwellings, in an otherwise built-up frontage in a recognised settlement'.
9. The part of the appeal site proposed for development is just off Dark Lane, a narrow route that extends away from the more built-up core of the village of Kingsley. Although in distance terms the village is relatively close, the appeal site is located where there is an obvious dispersal of buildings where the settlement transitions into the surrounding rural Green Belt countryside, as experienced on the ground. Therefore, I consider that the appeal site is located on the outskirts of Kingsley, just beyond and not within the village.
10. Moving away from Kingsley along Dark Lane, as the instances of development become more sporadic, buildings are spaced out by large gaps of gardens and paddocks. Along the same side of the Lane as the appeal site, there is no obvious built-up frontage and the gaps between development become larger. Although historically buildings may have occupied the appeal site, today it is open and undeveloped, providing one such large gap that separates two properties along Dark Lane. The appeal site is not a small gap but a relatively large open paddock and the appeal proposal would stand well apart from the dwellings either side.

11. I turn to the matter of the appeal site's location beyond the defined settlement boundary of Kingsley below. Having assessed the site-specific circumstances on the ground, I do not consider that the proposal comprises limited infilling in villages and therefore does not find exception under paragraph 154 (e) of the Framework or Policy STRAT 9 of the LP1. The proposal is not for other forms of development listed under paragraph 155 of the Framework. Therefore, having regard Framework and relevant development plan policies, the proposal would be inappropriate development in the Green Belt.

Openness of Green Belt

12. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
13. The effect on openness is not just related to the size of a development but also its purpose. Notwithstanding part of the overall appeal site would remain open and undeveloped, the proposed development would introduce a two-storey detached house and large outbuilding, areas of hardstanding for parking and access. There would also be domestication and residential activity introduced onto a part of the Green Belt that is currently open countryside. Therefore, there would be both a spatial and visual impact on Green Belt openness. The proposal therefore undermines the openness and permanence of the Green Belt, contrary to the fundamental aim of Green Belt policy within the Framework, and Policy STRAT 9 of the LP1.

Character and Appearance

14. As Dark Lane extends away from the core of the village, the instances of development become more sporadic and, with no paths or street lighting the route is increasingly characterised by a verdant, rural country lane character. Traditional dwellings tend to be located towards one end of their plots and flank the Lane and where stone walls and hedgerows provide a strong boundary along it. The generous overall plot sizes, undeveloped spaces between buildings, provides a verdant, spacious feel to this part of Dark Lane. Part of the appeal site which is outside the CA includes the sloping gardens plots of two dwellings fronting Top Road, which is characterised by a more regular frontage with long garden plots extending to the rear. Separating the paddock from the garden part of the appeal site is a stream called The Nab.
15. The boundary of the CA encapsulates the traditional ribbon development and green spaces that line the principal routes that radiate from the more built-up core of Kingsley. The range of age and architectural styles within the CA, together with green spaces and views out towards the wider rolling countryside, contributes to legibility of its origins, and built evolution as a loose-knit settlement within wider rural surroundings. Therefore, the traditional buildings, the character of different routes and relationship between development and open spaces, topography, and views, are of value to the character and appearance of area and contribute to the significance of the CA as a whole.
16. The undeveloped paddock part of the appeal site is located towards the south-western extent of the CA where Dark Lane transitions into the rural landscape beyond Kingsley. The appellant's Heritage Statement and historic map extracts

and photographs indicate that that some form of structures existed within the appeal site historically, including greenhouses up to the early 1980s. Today, however, the paddock area is characteristically verdant and open and provides a green punctuation perceptible from Dark Lane and from the public footpath that runs post along the site's side boundary. Together with the hedged boundary along the Lane, the open greenfield nature of the appeal site makes a positive contribution to the character and appearance of Dark Lane, as well to significance of the CA.

17. The proposed dwelling and large outbuilding would cumulatively introduce a substantial amount of built form onto the Dark Lane facing part of the appeal site. The orientation of the proposed dwelling is intended to maximise sunlight, and although a portion of site would remain undeveloped, the introduction of a large dwelling, outbuilding, associated access, and hardstanding would make a significant urban intrusion. I take no issue with the detailed design or materials of the proposed dwelling, nevertheless the semi-rural and open characteristics of the appeal site would be fundamentally weakened.
18. Not only would the introduction of buildings onto the appeal site reduce the green and open contribution it makes along Dark Lane also, the proposal would involve the removal of part of the hedged boundary to accommodate the proposed site access and a passing place. Whilst the barbed wire within the hedge would be removed, and proposed landscape scheme includes replacement native species hedge, it would be along the realigned site frontage and deviate from the strong boundary to Dark Lane that adds value to the character and appearance of the area.
19. The appellant's Urban Grain Analysis demonstrates that the proposed development would have a footprint to plot ratio of 4%. The overall proportion of built form to undeveloped space may be comparable to ratios of the dwellings either side that are within the CA. Even so, the proposed development would cause harm to the character and appearance of the area, resulting in conflict with Policy ENV 6 of the LP1 and Policy DM 3 of the Local Plan (Part Two) Land Allocations and Detailed Policies Plan (LP2), insofar as they seek to ensure development achieve a high standard of design that respects the character of the local area, and is sympathetic to heritage, environmental and landscape assets.
20. I note that the Council's conservation officer did not object to the scheme. However, the statutory duty to pay special regard to the desirability of preserving or enhancing the character or appearance of the CA is on me as decision maker. As the proposal would fail to preserve the semi-rural country lane character that is of value to Dark Lane and the CA as a whole, the proposed development would run contrary to the statutory presumption under s72(1) of the Act, which carries considerable importance and weight. The significance of the CA as a designated heritage asset would be harmed, leading to conflict with Policy ENV 5 of the LP1 and Policy DM 46 of the LP2, insofar as they seek to safeguard or enhance designated heritage assets and that development responds positively to designated heritage assets, avoiding loss or harm to their significance.
21. In the terms of the Framework and bearing in mind the scale and nature of the proposed development, the harm to the significance of the CA would be less

than substantial harm. Paragraph 208 of the Framework requires that this harm be weighed against the public benefits of the proposal.

22. The proposal would contribute one self-build dwelling and offer social and economic benefits associated with diversifying the market, increasing consumer choice and the addition a small site that would contribute to meeting the housing requirements for the area. There would also be economic benefits relative to the construction phase, and as future occupiers feed into the local economy. Any biodiversity or highway safety enhancements offer some public benefit, albeit in the main the habitat creation and protection and access arrangements are largely in mitigation. On the other hand, I have limited evidence that gives clear and convincing justification for the scheme. Even taking into consideration the demonstrable need for self-build housing that the Council is failing to satisfy, cumulatively, the public benefits of the proposal would not be sufficient to outweigh the less than substantial harm to the significance of the designated heritage asset and the great weight that it carries. Conflict therefore arises with the historic environment protection policies under Section 16 of the Framework.

Suitable Location

23. Policy STRAT 1 of the LP1 seeks to enable development that satisfies various sustainable development principles. LP1 Policy STRAT 2 sets out a settlement hierarchy, which provides for an appropriate level of development in smaller rural settlements with adequate services and facilities and access to public transport. Kingsley categorised as a local service centre in LP2, wherein Policy STRAT 8 of the LP1 indicates the amount of development will reflect the scale and character of the settlement concerned and the availability of services, facilities, and public transport. In line with Policy STRAT 8, Policy R1 of the LP2 supports development proposals in in local service centres, where they meet the relevant policy criteria.
24. Kingsley is a local service centre with a defined settlement boundary as identified on the policies map. The boundary has been drawn where built development begins to thin out and where greater gaps start to arise between dwellings along Dark Lane, skirting the part of the appeal site proposed for development but including the Top Road dwellings and their wider garden plots. Although the part of the appeal site proposed for development is adjacent to the settlement boundary, it is situated beyond the local service centre of Kingsley.
25. New housing development outside but adjacent to a local service centre is only supported under Policy STRAT 8 if it is in line with LP2 Policy DM24 and other exceptions, none of which are advanced in this case. For planning policy purposes therefore, the proposed development would be in the rural countryside. Taking into account my finding on the previous main issue, the proposed development conflicts with Policy STRAT 8 insofar as it requires development be appropriate in scale and design to conserve each settlement's character and setting.
26. Policy STRAT 9 of the of the LP1 seeks to protect the intrinsic character and beauty of the countryside by restricting development to that which requires a countryside development and cannot be accommodated within identified settlements. The proposed development does not meet any of the types of development permitted under this policy, which also requires it be of an

appropriate scale and design to not harm the character of the countryside. My conclusion on the proceeding main issue indicates that the proposed development would conflict with Policy STRAT 9 of the LP1.

27. Concerning development in the countryside, outside of identified settlements, proposals for residential development in the countryside will only be supported under Policy DM 19 of the LP2 in certain circumstances. This includes replacement buildings on previously developed land. However, while noting parts of the appeal site had seen some development in the past, there are no buildings extant. As the proposal would 'urbanise' the countryside, overall, it would be conflict with Policy DM 19 of the LP2.
28. Purely in distance terms, the appeal site is not far from dwellings and sites that fall within the settlement boundary. However, to sustainably access the range of services and public transport that Kingsley offers from the appeal site it would require walking or cycling further along the narrow route of Dark Lane. Much of Dark Lane has no public footway or street lighting and I experienced it to be off-putting to walk along, even in daylight. Notwithstanding that opportunities to maximise sustainable transport solutions will vary between urban and rural areas; that the proposal includes a passing place; and that Kingsley may have an adequate level of existing services and some access to public transport, I do not consider the appeal site is in the most accessible or sustainable location.
29. I therefore find that the proposed development would also fail to accord with the sustainable development principles and settlement hierarchy of Policies STRAT 1 and STRAT 2 of the LP1. Drawing all of this together, the appeal site does not offer a suitable location for the proposed development having regard to the development plan policies that support sustainable development and limit new housing in the countryside.

Other Considerations

30. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reasons of inappropriateness, and any other harm resulting from the appeal development, is clearly outweighed by other considerations.
31. The proposed development would provide one dwelling that would contribute to boosting the supply of housing, to which there is no upper limit. The Council has not disputed the appellants' evidence in respect of self-build, which indicates that it is failing its statutory duties to give enough permissions for serviced plots to meet demand. The case is also put that there is not a specific self-build development plan policy, so the objectives of paragraph 63 of the Framework are not being met. The proposed development would offer a single self-build dwelling that would go towards meeting a demonstrable need and demand for this development type. Although the provision of just one self-build dwelling against any shortfall or boosting housing supply would not be considerable, the beneficial contribution to the mix and choice of homes carries moderate weight in favour of the proposal.
32. The proposal would create biodiversity enhancements, including a proposed biodiversity net gain of +48.84%, well in excess of the 10% that is to be

mandated in national policy. Policy ENV 4 of the LP1 does not specify a specific percentage increase, however, a net gain of nearly 50% would be a positive benefit and consideration that, bearing in mind the size of the appeal site, carries moderate weight. The proposed new passing bay on Dark Lane would facilitate cars passing along the narrow route and ease traffic flow. However, I have limited evidence to indicate any particular highway safety or traffic issue along Dark Lane and so I only afford limited positive weight to this consideration.

33. It is suggested that the proposal would lead to an investment of around £600,000 in construction with the addition of four full-time direct and four full-time equivalent indirect jobs, with a total investment of over a £1 million relative to the construction. There would also be spending in the local area that would support local services and facilities. The proposal would help diversifying the market, increasing consumer choice and contribute a small site under 1ha where there is upper limit to the supply of housing. Although there would likely be some increased expenditure in the local services, there is no compelling evidence to indicate that the services and facilities in Kingsley, or the vibrancy of the community, would not be sustained in the absence of the appeal scheme, nor that there are not sites available where benefits could be achieved without the harms identified. Overall, the contribution that a single dwelling would make in terms of economic and social benefit carries moderate weight as other considerations.
34. The appellants have referred me to various decisions in support of their proposal. In respect of the court judgment¹, however, there was no dispute over the settlement boundary due to changes made during the development plan preparation, which is not the case in the appeal before me. The appeal decision at Great Bentley (Ref APP/P1560/W/17/3174843), was some considerable distance from the appeal site and therefore of different policy and site context. In the appeal decision relating to a specialist bungalow (Ref APP/A0665/W/18/3198387), the Inspector found the proposal comprised limited infilling in a village and the appeal site would fall between a clear continuum of development. While that site was just outside the settlement boundary, the circumstances on the ground are not directly comparable.
35. I have also been referred to various appeal decisions to indicate the weight other Inspectors have given, including relating to self-build housing, ecological and other considerations. I note the Inspector deciding the appeal Ref APP/A0665/W/22/3290072 found the weight of other considerations relating to public access and ecological enhancement outweigh the Green Belt and other harm in that case. However, that proposal was for six dwellings and while not including self-build, it included substantial woodland and shrub planting in the region of some 20,000 individual trees/shrub specimens. That planning permission was granted at 52 Top Road (Ref 17/05469/FUL) is not usefully comparable to the appeal proposal given its location within the settlement boundary of Kingsley and the nature of the route to access services and facilities.
36. While I have born in mind these material considerations, the detailed circumstances and background will inevitably differ in respect of scale of the development and the proportion of contribution to a self-build undersupply, the

¹ Julian Wood v SSCLG & Gravesham Borough Council [2015] EWCA Civ 195

policy considerations, and locational circumstances. I therefore afford limited weight to these as other considerations.

37. That the appeal site was historically occupied by structures, including dwellings, and is not identified as an important gap in policy or a Conservation Area Appraisal are not considerations that carry weight in favour of the proposal. Nor does the absence of harm in relation to the living conditions of the occupiers of nearby properties. The appellants design and access statement indicated that renewable energy resources would be used wherever possible to reduce carbon emissions. Subject to suitably worded conditions, there would be no harm to surrounding vegetation, habitats, or protected species. While these factors do not weigh against the proposal, they are neutral considerations.

Green Belt and Planning Balance

38. Harm to the Green Belt carries substantial negative weight; harm to the CA carries considerable importance and weight. Overall and on balance, I find that the cumulative weight of other considerations that weigh in favour of the proposal are not sufficient to clearly outweigh the totality of the harm to the Green Belt and other harm that I have identified. Consequently, the very special circumstances necessary to justify the appeal development do not exist.
39. It is not in dispute that there is not a development plan policy relating to self-build housing. The 'tilted balance' at paragraph 11d) of the Framework means where there are not relevant development plan policies...granting permission unless (11d)i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 includes policies relating to land designated as Green Belt, and designated heritage assets. My findings in respect of Green Belt harm and the harm to the CA therefore provide a clear reason for refusing the development for the purposes of paragraph 11d) of the Framework.

Conclusion

40. For the reasons given above, I find that the proposal conflicts with the development plan taken as a whole and material considerations do not indicate a decision should be made other than in accordance with it.
41. Accordingly, I conclude that the appeal should be dismissed.

C Billings

INSPECTOR