



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: 24th June 2024

Appeal Ref: APP/H2265/W/23/3333798

Dux Farm Buildings, Dux Lane, Plaxtol, Sevenoaks, Kent, TN15 0RB

- 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 Cubed Development Ltd against the decision of Tonbridge and Malling Borough Council.
 - The application Ref is TM/22/00543/FL.
 - The development proposed is the demolition of existing commercial buildings and open-sided agricultural building and residential redevelopment of the site, comprising 1 no. single storey detached dwelling & 3 no. detached 2-storey dwellings with associated curtilages, parking and access.
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition of existing commercial buildings and open-sided agricultural building and residential redevelopment of the site, comprising 1 no. single storey detached dwelling & 3 no. detached 2-storey dwellings with associated curtilages, parking and access at Dux Farm Buildings, Dux Lane, Plaxtol, Sevenoaks, Kent, TN15 0RB in accordance with the terms of the application, Ref TM/22/00543/FL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description in the heading above differs from that included on the application form. A revised description was agreed by the Council and the appellant following an alteration to the scheme. The amendments consisted of the removal of Plot B as shown on the site plan, replacing the use of the single storey building at Plot A from office to residential, and increasing the spacing between the remaining plots. For clarity I have used the amended description which more accurately describes the scheme submitted to and consulted upon by the Council.
3. 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"*. Therefore, I have replaced references from AONBs to National Landscapes.
4. 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

5. The main issues are:

- Whether the development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies and its effect on openness; and
- The effect on character and appearance, having regard to the Kent Downs National Landscape.

Reasons

Whether inappropriate development

6. Policy CP3 of the Tonbridge and Malling Borough Core Strategy (TMCS) adopted September 2007 establishes the extent of the Green Belt and states that the national Green Belt policy will be applied. TMCS Policy CP14 also highlights that inappropriate development within the Green Belt will need to be justified by very special circumstances. These policies are generally consistent with the Framework, which explains 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.
7. Paragraph 154 of the Framework states that the construction of new buildings in the Green Belt is inappropriate subject to several exceptions. The appellant cites criteria 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 relevant exception of paragraph 154 in this particular case.
8. 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. However, the definition specifically excludes land that is or was last occupied by agricultural or forestry buildings. With the exception of the open-sided agricultural building (Building C), the Council do not dispute that the appeal site would constitute PDL. From the evidence before me, I have no reason to disagree with this assessment and would concur that the appeal site is PDL for the purposes of Green Belt. 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.
9. 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. 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.

10. In regard to the spatial dimension both parties agree the proposal would result in a reduction in the quantum of built development at the site, highlighting that both the volume and the footprint of the development would be reduced by 46% and 50.5% respectively. As such the proposal would not have a greater impact on the openness of the Green Belt than the existing development in spatial terms.
11. However, there is the visual aspect to be considered as well. The area has a rural feel with large verdant open fields surrounding the appeal site. There is noticeable variation in the topography around the site, with rolling fields providing the backdrop to the appeal site. The site itself is located in an elevated position in comparison to the adjoining property at Dux Barn. The appeal site consists of a large commercial barn (Building A) flanked by an open-sided agricultural building (Building C) with a smaller commercial unit (Building B) located at the northern tip of the site. These units are located amongst a cluster of several other residential properties in the vicinity, providing a quaint countryside appearance.
12. From my site observations, it was apparent that the surrounding area has a strong rural character, largely comprising agricultural land with sporadic residential/agricultural/commercial buildings located amongst it. Despite its large overall footprint and elevated position in relation to its nearest neighbours, the existing buildings are discretely located. The barn like appearance is relatively unassuming, being located amongst the existing sporadic cluster of residential units to the south and east of the site, and it is within this visual setting, it is to be assessed.
13. The proposal would significantly reduce the amount of development on site, providing 4 separate dwellings within a relatively tight area. The proposal would also result in the removal of Building C as part of the proposal, thus providing a more open feel. The overall plot size and relative heights of the buildings proposed, have been designed to be comparable with the existing development on the site. I acknowledge that the eaves heights will increase from the existing buildings, however this would reflect the nature of the residential dwellings in the vicinity. Any additional bulk and massing at the upper floor levels, would be commensurate with these other residential properties.
14. Given the relatively enclosed nature of the site and its context amongst the surrounding residential dwellings, short views of the site would be limited to glimpses only. Whilst there may be some longer views of the site from public footpaths and rural roads in the locality, these are limited as the site would appear as part of the existing small cluster of buildings within Dux Lane, rather than as part of the open countryside. Given this context, in visual terms it would not have a greater impact on the openness of the Green Belt than the existing development.
15. Since the proposal would not have a greater impact on openness and would not conflict with the purposes of including land in the Green Belt, I consider that the development proposed would not be inappropriate development within the Green Belt.

Character and appearance

16. 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 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. TMCS Policy CP7 also seeks to conserve and enhance the Kent Downs National Landscape, stating proposals should have regard to local distinctiveness and landscape character, and use sympathetic materials and appropriate design.
17. The surrounding landscape is predominantly rural, and whilst not in agricultural usage (other than Building C) the existing buildings provide an agricultural feel given the barn like appearance. Whilst the appeal site contributes to the rural character of the surrounding area, given its position amongst the existing residential dwellings, it appears as part of the more developed cluster thus its contribution to the open character of the Kent Downs National Landscape and its wider setting is limited.
18. Given its context amongst the existing dwellings, the positioning of the proposed units would be adequately spaced from neighbours within the proposal and also from those adjoining the site. The scheme would provide an appropriate design which would not appear cramped, or as overdevelopment, or unsympathetic to the local character. The proposed new dwellings have been designed as a mixture of single and two-storey dwellings stepping away from Dux Barn to the south. The general vernacular and traditional design features have sought to be respective of the existing built form and would be subject to conditions to secure suitable materials.
19. As such, the proposal would assimilate appropriately within the existing small cluster of dwellings, albeit it is acknowledged that the existing and proposed landscaping would take time to establish. Nevertheless, any minor impact on the character and appearance of the area would be limited. Therefore, the proposal would at the very least conserve the landscape and natural scenic beauty, visual qualities and essential characteristics of the Kent Downs National Landscape, and the character and appearance of the surrounding countryside.
20. Accordingly, I conclude that the proposal would be acceptable development in terms of the effect on the character and appearance of the area, including the Kent Downs National Landscape. It would, therefore, comply with TMCS Policies CP7 and CP24, Policy SQ1 of the Tonbridge and Malling Borough Council Development Plan Document (DPD), adopted April 2010 and the Framework which collectively seek, amongst other things, development that is high quality design, respecting local, natural and historic character, appropriate to local landscape character and does not have a significant adverse impact on the setting of the Kent Downs National Landscape.

Other Matters

21. The adjoining property of Dux Barn is designated as a Grade II listed building as such the appeal site is located within its setting. I have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) to have special regard to the desirability of preserving the

- listed building or its setting or any features of special architectural or historic interest.
22. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
23. The significance of Dux Barn is derived from its historic fabric, including its weatherboarded finish with catslide tiled roof and hipped wagon entrance. The appeal site adjoins the boundary with the Grade II listed building at Dux Barn, and therefore forms part of its surrounding from which it is experienced. The proposed separation distance is akin to the existing, and there is significant boundary screening between the proposal and the listed building. Furthermore, given the modest scale and form of the proposal closest to Dux Barn (i.e. the single-storey unit), it would not feature prominently within the setting of this listed building.
24. Therefore, I am not convinced that the proposal would result in any harm to the setting of Dux Barn, which would accordingly preserve its significance. Consequently, as the proposal would preserve the significance of the identified listed building it would therefore accord with the Act, and this would be a neutral factor which would not weigh for or against the proposal.
25. The Council accept that it cannot demonstrate a suitable land supply for housing. As such, the provisions of paragraph 11d) of the Framework are relevant to the appeal. As the application of policies in the Framework that protect areas of particular importance do not provide a clear reason for refusing the development, and as I have not identified any adverse impacts of granting planning permission, the proposal would benefit from the presumption in favour of sustainable development. This adds further weight in favour of granting planning permission.
26. I have taken into account all of the other matters and concerns raised in the submissions by interested parties, which include but are not limited to, traffic, parking, precedent, impact on biodiversity, the living conditions of neighbours, landscaping, lighting, flooding and loss of employment. Whilst I take these submissions seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Some of the issues raised can also be controlled through conditions and by other regulations. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.

Conditions

27. The Council has provided a list of suggested conditions that it considers would be appropriate. I have assessed those with reference to the advice in the Framework and Planning Practice Guidance and have amended the wording of some without altering their fundamental aims. I sought the views of the parties on the conditions, including the appellant's agreement to pre-commencement conditions.

28. As well as the standard implementation condition, I have imposed a condition to ensure that the proposal is carried out in accordance with the approved plans to provide certainty.
29. In the interests of highway safety and the living conditions of neighbouring residents I have imposed a requirement for a Construction Management Plan which is necessary to submit prior to the approved development commencing.
30. The conditions relating to contaminated land are necessary to mitigate the risks of contamination to construction workers, future users of the land, and offsite receptors including neighbouring occupiers and water and ecological systems.
31. Conditions relating to materials, hard and soft landscaping, boundary treatments and the retention of agricultural uses are necessary to secure the satisfactory appearance of the Kent Downs National Landscape and the enhancement of the immediate setting.
32. A condition to secure details surface water drainage is required as only limited information has been provided and in the interests of sustainable water management.
33. Conditions relating to ecology, biodiversity and external lighting are necessary to secure adequate protection for nesting birds, bats and other wildlife on and around the site and for the enhancement of biodiversity. The external lighting condition is also necessary to conserve dark skies in the Kent Downs National Landscape.
34. I have imposed conditions to ensure that there is appropriate vehicle and cycle parking provision, and a suitable car parking layout is maintained in the interests of highway safety and the living conditions of future residents.
35. Finally, I have also attached a condition removing permitted development rights for additional structures within the curtilage of the properties to protect the openness and character and appearance of the Kent Downs National Landscape, the Green Belt and countryside.

Conclusion

36. For the above reasons, having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Robert Naylor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: 6903-PD-10 Rev B, 6903-PD-11 Rev B, 6903-PD-15 Rev A, 6903-PD-17 Rev A, 6903-PD-18 Rev A and 6903-PD-19 Rev A.
- 3) Prior to commencement of development, including demolition works arrangements for the management of any and all demolition and/or construction works shall be submitted to and approved by the Local Planning Authority. The management arrangements to be submitted shall include (but not necessarily be limited to) the following:
 - The days of the week and hours of the day when the construction works will be limited to and measured to ensure these are adhered to;
 - Procedures for managing all traffic movements associated with the construction works including (but not limited to) the delivery of building materials to the site (including the times of the day when those deliveries will be permitted to take place and how/where materials will be offloaded into the site) and for the management of all other construction related traffic and measures to ensure these are adhered to;
 - Procedures for notifying properties identified as likely to be affected as to the ongoing timetabling of works, the nature of the works and their likely duration, with particular reference to any such works which may give rise to noise and disturbance and any other regular liaison or information dissemination;
 - The specific arrangements for the parking of contractor's vehicles within or around the site during construction and any external storage of materials or plant throughout the construction phase;
 - The controls on noise and dust arising from the site with reference to current guidance; and
 - An assessment of the risks posed by any asbestos contamination within the buildings to be demolished including but not limited to identification of potential sources of asbestos contamination; a scheme of mitigation or removal where appropriate; and details of how the mitigation or removal shall be independently verified.

The development shall be undertaken in full compliance with the approved details.
- 4) Prior to commencement of development, including demolition works the following shall be submitted to and approved by the Local Planning Authority:
 - (a) results of the site investigations (including any necessary intrusive investigations) and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk assessment, which details how the site will be made suitable for its approved end use through removal or mitigation

measures. The method statement must include details of all works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site cannot be determined as Contaminated Land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended).

The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use.

(b) prior to the commencement of the development the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority should be given a minimum of two weeks written notification of the commencement of the remediation scheme works.

- 5) Following completion of the approved remediation strategy, and prior to the first occupation of the development, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted for the information of the Local Planning Authority.

The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved.

Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.

- 6) No development above ground level shall take place until details / samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details / samples.
- 7) No development above ground level shall take place until a scheme of hard and soft landscaping and boundary treatment shall be submitted to and approved by the Local Planning Authority. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building to which they relate.
- 8) No development above ground level shall take place details of all proposed boundary treatments have been submitted to and approved by the Local Planning Authority. The boundary treatments shall be installed

in accordance with the approved details prior to the first occupation of the approved development and retained at all times thereafter.

- 9) No development above ground level shall take place until a Verification Report pertaining to the surface water drainage system for that phase, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; and topographical survey of 'as constructed' features.
- 10) The development shall be carried out in strict accordance with the recommendations of the Preliminary Ecological Report prepared by Corylus Ecology received 09.03.2022 and be retained and maintained thereafter.
- 11) No external lighting shall be installed in connection with the development hereby permitted until such details have been submitted to and approved in writing by the Local Planning Authority. The details should demonstrate that the scheme will not disturb bat activity. All external lighting shall be installed in strict accordance with the approved details and maintained and retained thereafter. No further external lighting shall be installed.
- 12) Prior to the occupation of the dwellings hereby permitted, the area shown on the submitted layout referenced 6903-PD-10 Rev B as vehicle parking space to serve the associated dwelling shall be provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.
- 13) Prior to the occupation of the dwellings hereby permitted, details of secure cycle storage to serve the development shall be submitted to and approved by the Local Planning Authority. The cycle storage shall be installed prior to the first occupation of the development, and thereafter maintained and retained in accordance with the approved details.
- 14) Prior to the occupation of the dwellings hereby permitted, the Barn (Building C) in the far south-western corner of the site shall be demolished and the ground made good and for agricultural uses. The ground maintained and retained for agricultural uses thereafter.

- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no extension, enlargement, alteration or provision within the curtilage of each of the dwellinghouse as provided within Schedule 2, Part 1, Classes A, B and E other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority

END OF SCHEDULE