



Appeal Decision

Site visit made on 1 October 2024

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2024

Appeal Ref: APP/H2265/W/24/3336407

Former Quarry House, 81 Quarry Hill Road, Borough Green Kent

- 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 Gadsdon of Canham Homes Ltd against the decision of Tonbridge and Malling Borough Council.
 - The application Ref is TM/22/02295/FL.
 - The development proposed is erection of a terrace of 4 dwellings with associated gardens and car parking.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the site address from the appeal form as this is more accurate than that on the application form.
3. The proposal was refused for three reasons, two of which related to a lack of information with respect to flood risk and biodiversity. The Council's officer report sets out that the appellant was not given the opportunity to address these matters during the application process. Consequently, the appeal has been accompanied by a flood risk assessment and an ecological assessment. The main parties are in agreement that these reasons for refusal have been addressed. However, this view is not shared by interested parties. I have therefore continued to consider both of these matters as main issues.

Main Issues

4. The main issues in this appeal are:
 - whether the proposed development would be inappropriate development in the Green Belt having regard to the development plan and the National Planning Policy Framework (the Framework);
 - the effect of the proposed development on the purposes and openness of the Green Belt;
 - whether the site is in a suitable location for development with respect to flood risk; and
 - whether the proposal would have an acceptable effect on biodiversity.

Reasons

Green Belt

5. The site is in the Green Belt. Tonbridge and Malling Core Strategy (September 2007) (CS) Policy CP3 predates the Framework. Nonetheless, it confirms that national Green Belt policy applies to the west of the A228 which includes the appeal site. The Framework identifies at paragraph 142 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 152 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 of the Framework confirms that new buildings are inappropriate in the Green Belt unless it is one of the exceptions listed.
6. Paragraph 154 e) of the Framework sets out that limited infilling in villages is one such exception. Case law¹ has confirmed that it is a matter of planning judgement as to whether a site falls within a village. Borough Green is identified in CS Policy CP12 as a Rural Service Centre. There is no definition of village in the Framework and so this would not automatically preclude the site from consideration under this exception. I have not been provided with details of the confines of the settlement, however this too would not be determinative.
7. Infill development is commonly understood to involve development between existing development. The site is immediately adjacent to the modern dwellings at Allingham Close and in proximity to Borough Green Medical Practice, both of which are adjacent to a large roundabout. However, the other boundaries of the site are to open or wooded land. While there is further development to the west of the site, the separation provided by the wooded boundary and the topography of the area is such that the site does not appear as a gap in, or otherwise integrated with, the existing built form. It would not be a rounding off of the development at Allingham Close which is all situated on the opposite side of the access road. It sits on the edge of the settlement, and appears as adjacent to the village, rather than being within it.
8. Even if I were to consider four dwellings limited in the context of Borough Green, the site would not constitute infill, nor would it be within the village. The proposed development would therefore not benefit from the exception set out in paragraph 154 e) of the Framework.
9. The visual quality of the site is not relevant to any assessment to this exception. There is no substantive evidence before me to demonstrate that the site is detached from the wider Green Belt.
10. The appeal proposal would constitute inappropriate development in the Green Belt. It would be contrary to CS Policy CP3 and would not meet any of the exceptions set out in paragraph 154 of the Framework. Paragraph 153 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Purpose and Openness

11. 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. Openness is the absence of

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

development and the Planning Practice Guidance confirms this can have spatial as well as visual aspects.

12. Paragraph 143 of the Framework sets out the five purposes of the Green Belt, namely to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
13. The appeal site is currently a predominantly open area of green space, with vegetation to the surrounds. The proposal would permanently and irreversibly reduce both spatial and visual openness as a result of the introduction of built development.
14. The proposed development would result in a very limited degree of urban sprawl as the built form of the settlement would be extended. For the same reason, there would also be encroachment into the countryside. The proposal would therefore result in harm to two of the purposes of the Green Belt. This harm would be limited in its impact, given the small scale of the development and the high degree of enclosure provided by the surrounding woodland.
15. While the harms I have identified to the openness and purposes of the Green Belt would be localised and limited, they would nonetheless be harms. In accordance with the advice in paragraph 153 of the Framework, I attach substantial weight to these harms.

Flood Risk

16. CS Policy CP10 refers to development within the floodplain and seeks to make use of areas at no or low risk to flooding before areas at higher risk. This is broadly compatible with paragraph 165 of the Framework which seeks to direct development away from areas at the highest risk. Part of the site lies within Flood Zone 3, with the majority being within flood zone 1.
17. Paragraph 168 of the Framework confirms that development should not be permitted if there are reasonably available sites in an area at a lower risk of flooding. There is no exception for sites where only part of the site lies within flood zone 3. I have not been directed to a strategic flood risk assessment which would allow for the sequential test to be applied in a different manner.
18. The evidence before me does not include a sequential test. The flood risk assessment sets out that modelled flood levels following works to the culvert show the majority of the site in flood zone 1 with only a very small area within flood zone 2. However, the Environment Agency raise concerns as to how the works to the culvert have been carried out. I therefore cannot be certain that flood risk to the site has been reduced. In any event, part of the site being within flood zone 2, however small, means a sequential test is still required. Furthermore, I have not been directed to any provision within national policy for alternative modelling to be used in place of the Environment Agency flood maps, nor have I been directed to any local provision that would allow for such an approach.
19. It is also set out that the development has been designed so that built development lies outwith the areas at risk of flooding. However, I have not

been provided with any justification that would allow for a site specific sequential test to apply in place of a locational sequential test.

20. I therefore cannot be satisfied that the site is in a suitable location with respect to flood risk. It would therefore be contrary to CS Policy CP10 which seeks to direct development to areas at no or low risk of flooding. It would also be contrary to the advice in Section 14 of the Framework which requires development proposals to undertake a sequential test where the site is not allocated.
21. In the absence of a sequential test, it is not necessary for me to consider any other matters in relation to flood risk.

Ecology

22. An ecological assessment (the assessment) was submitted as part of the appeal documentation. The site is identified as lying within an area of deciduous woodland (a habitat of principle importance) and the Bourne Valley Woods Local Wildlife Site. The assessment notes that the site is not wooded but rather is grassland surrounded by woodland. This is consistent with my observations at my site visit. It recommends protective measures for the protection of the surrounding woodland were permission to be granted. I am satisfied that these measures would ensure there would not be an adverse effect on the surrounding woodland.
23. The assessment also surveyed the site for protected species. In light of its findings, further monitoring was carried out. This confirmed no protected species were present on the site. The Council and their ecological consultee are satisfied with these findings. I have no reason to disagree with the survey results or the conclusions reached. Mitigation measures are proposed and these could be secured by condition.
24. This survey is more recent than that submitted by interested parties which did not assess the appeal site. The suggested mitigation measures within the assessment included recommendations with regard to bats which I am satisfied would mitigate the effect of the development should the surrounding woodland be used for foraging and commuting.
25. The proposed development would therefore have an acceptable effect on biodiversity. It would therefore comply with Managing Development and the Environment Development Plan Document (2010) (MDE) Policies NE2 and NE3 which require development to protect priority habitats and species. It would also be in accordance with the advice at paragraph 180 of the Framework which requires planning decisions to minimise the impact on biodiversity.

Other Considerations

26. The proposal would deliver an additional four dwellings in an area where the development plan is of some age, the requirements of the Housing Delivery Test have not been met and there is a shortfall in the supply of housing land. Despite the small number of dwellings proposed, I attach moderate weight to this benefit given the shortfalls in housing supply and delivery. The proximity of the site to a defined Rural Service Centre which contains services and facilities would also weigh in support of the scheme. There would be economic benefits during the construction and occupation stages of the development. Given the proposal is for four dwellings, I attach limited weight to these

benefits. The appellant's own evidence accepts that opportunities for ecological enhancement would be limited. Nonetheless, this would be a benefit. The design of the dwellings would match the dwellings at Allingham Close and reflect the vernacular I observed elsewhere in Borough Green. While high quality development is to be expected, in this case given the use of the vernacular, I attach limited weight to this as a benefit.

27. The site is in proximity to the Kent Downs National Landscape (NL). Given its small and position relative to the existing development at Allingham Close and the medical centre, there would be a neutral effect on the setting of the NL. The site at present has an inherent value as a semi-natural open space and does not detract from the visual quality of the surrounding area. Its development would not offer a visual improvement. However, the proposal in and of itself would not detract from the visual quality of the area. I therefore consider this to also be a neutral factor. While it may be that the only way to meet housing requirements in the area will be through the release of Green Belt land, that is a matter for the plan making process.
28. A sustainable drainage system is proposed for surface water, however this would be to address the effects of the proposed development. The proposal would provide acceptable living conditions for future occupiers, nor would it harm the living conditions of surrounding occupiers. There would not be an adverse effect on the operation of the surrounding highway network. However, these are to be expected of any well-designed development and so would be neutral.
29. There are no developer contributions proposed, nor is there any evidence before me to suggest the Council has a community infrastructure levy charge in place.

Green Belt Balance

30. The proposal would constitute inappropriate development in the Green Belt and would harm its purpose and openness. CS Policy CP12 which confirms that development within the Green Belt will only be permitted if it is justified by very special circumstances. Paragraph 153 of the Framework states that substantial weight should be given to any harm to the Green Belt. The Framework clarifies that inappropriate development should only be permitted in very special circumstances and that such will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. It has not been demonstrated that the site is an appropriate location for development with respect to flood risk and I attach moderate weight to this.
31. The provision of an additional four dwellings would weigh moderately in support of the proposal given the shortfall in both housing land supply and delivery. There would be other benefits of the scheme arising from its location in proximity to existing services and facilities, economic benefits, ecological enhancements and from the vernacular design of the proposal. These would attract limited weight given the small scale of the proposal.
32. There would be a neutral effect on the NL from development within its setting and the visual quality of the area. It is to be expected that the development would provide acceptable living conditions for both future occupiers and surrounding residents. Sustainable drainage and an acceptable impact on the

highway network are also to be expected. These considerations would therefore all be neutral.

33. For the reasons given, I find the other considerations in this case do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Planning Balance

34. It is not in dispute that the Council cannot demonstrate the necessary supply of deliverable housing land. Nor has the failure to meet the requirements of the housing delivery test been contested. The appellant puts forward that the Council can only demonstrate a 3.17 year supply of housing land which has also not been challenged. This is sufficient to engage paragraph 11 of the Framework.
35. The harm to the Green Belt and with respect to flood risk would result in conflict with the development plan when read as a whole. My findings in respect of the Green Belt and flood risk means that there are policies in the Framework that provide a clear reason for refusing the development proposed. The proposal does therefore not benefit from the presumption in favour of sustainable development set out in paragraph 11d)i of the Framework.

Conclusion

36. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the policies of the Framework, to indicate the decision should be made other than in accordance with the development plan. For the reasons given, I conclude that the appeal should be dismissed.

Jennifer Wallace

INSPECTOR