



Appeal Decision

Site visit made on 19 September 2024

by R Lawrence BSc (Hons), PGDip (TP), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal Ref: APP/G2245/W/23/3332422

Land West Of 1 Wood Street, Swanley, Kent BR8 7PA

- 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 Mark Hilden against the decision of Sevenoaks District Council.
 - The application Ref is 23/01329/FUL.
 - The development proposed is the installation of a natural timber load bearing retaining wall that transitions into a fence.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of development provided in the application form in the banner heading above. However, I have omitted any superfluous text that is not in itself development.
3. The appeal scheme includes development that is in situ. For the avoidance of doubt, I have determined the appeal on its own merits and the submitted plans.
4. Amended plans have been submitted as part of the appeal. These include alterations to the height of the retaining wall and amend the boundary treatments on top. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Local Planning Authority and by interested parties at the application stage.
5. Established case law states that, in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a "substantial difference" or a "fundamental change" to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.
6. The amendments in this case would materially alter the proposal, in particular, they would result in considerable changes to its appearance and also have implications for the effect on highway and pedestrian safety. The changes have not been consulted upon. Therefore, interested parties and consultees have not had the opportunity to comment on the plans. I find that neither part of the necessary tests set out in the relevant case law have been satisfied and

as such I have determined the appeal on the basis of the plans on which the Council made its decision.

7. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. The timeframes for this appeal have provided an opportunity for the main parties to comment on the relevance of the revised Framework. As a result of the updates, the relevant paragraph numbers of the Framework have been updated, and consequently in some cases these differ from those set out in evidence.
8. On 30 July 2024 the Government published a consultation on "Proposed reforms to the Framework and other changes to the planning system" and the "National Planning Policy Framework: draft text for consultation". A Written Ministerial Statement entitled "Building the homes we need" was also published on 30 July 2024. The main parties were given the opportunity to comment on these publications, and I have had regard to comments received.

Main Issues

9. 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,
 - the effect of the proposal on the openness of the Green Belt,
 - the effect of the proposal on pedestrian and highway safety,
 - the effect of the development on the character and appearance of the area, 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 required to justify the development.

Reasons

Whether the proposal is inappropriate development within the Green Belt

10. Development within the Green Belt is inappropriate with the exceptions of the types of development listed in paragraphs 154 and 155 of the Framework. The appellant contends that the proposal would amount to the provision of appropriate facilities in connection with the existing use of land or a change of use. The appellant also contends that the proposal amounts to an engineering operation.
11. Criterion b) of paragraph 154 relates to 'the provision of the appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it'. There is no evidence to indicate that the proposal would be for any of the activities listed. As such, the proposal would fail to accord with this criteria.
12. The appellant disputes the Council's interpretation of the proposal as a building, indicating instead that it constitutes an engineering operation.

13. Paragraph 155 of the Framework sets out that engineering operations are not inappropriate development in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it.
14. As such, even if I were to accept the appellant's position, that the proposal constitutes an engineering operation, an assessment of the effect on the openness of the Green Belt and the purposes of including land within the Green Belt is required.

Openness and purposes

15. A fundamental aim of Green Belt policy, as set out in paragraph 142 of the Framework, is to prevent urban sprawl by keeping land permanently open. Openness has a visual and spatial dimension.
16. The appeal site comprises an elevated plot of land, adjacent to the highway, at the end of a row of bungalows. On its other sides the site is bordered by open fields, which form an undulating landscape. Although the appellant contends that the presence of the highway means that the appeal site is not in a countryside location, I find such roads to be common features within the countryside. The low level of built form together with the natural surrounding landscape, contributes to a strong rural setting.
17. The proposal is, in part, for a solid timber wall structure which extends a significant length adjacent to the highway. It has the effect of creating a boundary at a considerable height above the level of the road that would be highly visible to passers-by. The proposal would facilitate the parking of vehicles in an elevated and prominent position close to the site boundary, adding to the impact on openness. Although the post and rail fence element of the proposal would allow views through and in itself is not unduly bulky, it would be in an elevated position and contributes to the enclosing effect of the proposal.
18. Given the above factors, the proposal would harmfully erode the openness of the area, in both spatial and visual terms. Having regard to the scale of the proposal and its proximity to, and visibility from, the public highway, I find this harm would be significant. In light of this finding, the proposal would also constitute inappropriate development in the Green Belt.
19. The development not only erodes the openness of the Green Belt but also conflicts with one of the purposes of including land in the Green Belt, that is to safeguard the countryside from encroachment, as it introduces a feature with a distinct urban character into this rural setting.
20. Therefore, the proposal would comprise inappropriate development in the Green Belt, resulting in a loss of openness and would impact on the purposes of including land within it. The proposal would therefore fail to accord with the exceptions set out at Paragraphs 154b) and 155 b) of the Framework. Moreover, it would not accord with any of the other exceptions listed in the Framework.
21. My attention has not been drawn to any relevant development plan policies relating to the Green Belt.

Pedestrian and highway safety

22. The appeal site contains an existing vehicular access from Wood Street. The site itself is partially hard surfaced and at the time of my site visit there were a number of vehicles parked on it.
23. Wood Street is a narrow country lane of a limited width. There is a speed restriction of 30 mph. There is no pavement adjacent to the appeal site, requiring pedestrians to walk on the carriageway along this part of the road.
24. Driveways serving the adjacent row of bungalows provide off street parking, nonetheless, I observed a small number of vehicles parked on the road, further limiting the available carriageway width. The presence of the bungalows, various driveways and parked vehicles all serve to limit vehicle speeds. The existing driveway is in close proximity to this stretch of the road, however, there is limited visibility of the access due to the high earth bank adjacent to it. Similarly, as there is limited built form on the site, there is little to encourage lower vehicle speeds, beyond the 30mph restriction.
25. The earth bank, together with the proposed sleeper wall, would be of a significant height relative to the carriageway with very limited set back. This solid structure also extends along the driveway sides. Although the driveway slopes upwards, this is not to such an extent that suitable visibility would be achieved, and it would not enable sight of the nearside kerb edge. This would adversely affect visibility for drivers exiting the site as well as for highway users, including pedestrians, to observe vehicles emerging onto the carriageway.
26. Whilst the appellant has indicated the proposal could achieve the required visibility splays, based on the development in situ, as well as the submitted plans, substantial alterations would be required to achieve this for which there are no details before me. As such, I cannot be certain that the necessary visibility splays could be achieved.
27. In light of the above, there would be a likely detrimental effect on pedestrian and highway safety. The proposal would therefore conflict with Policy EN1 of the Allocations and Development Management Plan 2015 (ADMP). This policy requires, amongst other matters, that proposals provide a satisfactory means of access for vehicles and pedestrians.
28. There would also be a conflict with the requirements of the Framework, which include that development should avoid an unacceptable impact on highway safety.

Character and appearance

29. The adjacent row of bungalows is served by driveways, are set back from the road, including with areas of hardstanding. The front boundaries of the bungalows are often open, and where a formal boundary is in place, this takes the form of low brick or stone walls. These characteristics contribute to an attractive, rural village, setting.
30. Having regard to the length, form, proximity to the road and resulting sense of enclosure, previously referenced, the proposal would erode the attractive rural character which surrounds the site. The proposed boundary would detract from the views of the open fields beyond the site. The elevated height of the boundary in particular, would catch the eye, thereby eroding the attractive rural character.

31. The use of a natural material, timber sleeper walls, slightly softens the appearance of the retaining wall. Nonetheless there are no comparable examples of timber boundary walls of such a scale and length. As such, the selection of materials would not overcome the harm resulting from its scale and sense of enclosure.
32. I accept there could be some scope to improve the appearance of the proposal with soft landscaping, however, the main opportunity for this would be on top of the retaining wall, as such, it would achieve very little in terms of softening the appearance of the wall and the proposal as a whole. Moreover, landscaping is not permanent, and can die, or be removed, so should not be relied on to hide the development.
33. I have been referred to front boundary treatments and driveways at 1-10 Wood Street, the adjacent row of bungalows. However, where these properties have front boundary treatments they are of a much lower scale and are subordinate to the bungalows which sit behind. These are not comparable with the appeal scheme, and as such, do not persuade me that the proposal would be acceptable.
34. Therefore, the proposal would result in a detrimental effect upon the character and appearance of the area, in conflict with Policy EN1 of the ADMP. This policy requires, amongst other matters, that development is of a high-quality design which responds to the scale, height and materials of the area. There would also be a conflict with the Framework in so far as it seeks to achieve well-designed and beautiful places through developments that are visually attractive and sympathetic to local character.

Other considerations

35. The proposed development would constitute inappropriate development in the Green Belt and would result in a loss of openness. The Framework establishes that substantial weight should be given to any harm to the Green Belt. Very Special Circumstances will not exist unless the harm to the Green Belt and any other harm, is clearly outweighed by other considerations.
36. The timber sleeper wall is said to be necessary to prevent further earth collapse along the boundary of Wood Street and the appellants land, including preventing land collapsing onto a public highway. In addition, it is understood that the proposal is intended to create secure a footing for new trees and hedges.
37. There is no substantive evidence before me as to what extent earth collapse has occurred, or the frequency of such. Furthermore, even if I were to accept there was a need for works to prevent earth collapse, there is limited evidence as to whether there are any alternative, less harmful, solutions.
38. Facilitating the provision of new trees and hedges could create some benefits in visual terms, however, only very limited planting is proposed as part of the scheme before me. There are likely to be other means of encouraging and enabling additional planting on site, however, it has not been demonstrated whether these have been explored.
39. The proposal would provide security for the site, in particular against parking from unauthorised vehicles. Whilst I have no reason to doubt that the proposal would improve security, there are many forms of security that could be

provided, and I am not satisfied that a less harmful solution could not be found.

40. In light of the above, I attribute limited weight to these other considerations.

Other Matters

41. I note concerns raised regarding the lack of communication from the Council whilst the planning application was under consideration. This does not affect the merits of the proposal itself and has not been determinative.

42. The appellant has indicated a willingness to identify a suitable solution for the site. This is noted and the outcome of this decision does not preclude further negotiations between the Council and the appellant outside of this appeal.

Green Belt Balance

43. The proposal would be inappropriate development in the Green Belt, which is harmful by definition. There would also be significant harm to the openness of the Green Belt, and there would be a conflict with one of the purposes of including land within it, as set out at paragraph 143 of the Framework. Paragraph 153 of the Framework explains that any harm to the Green Belt attracts substantial weight.

44. The proposed development would also result in harm to pedestrian and highway safety, as well as to the character and appearance of the area. These harms each attract significant weight and result in conflicts with paragraphs 115 and 135 of the Framework.

45. There are benefits to the scheme which attract limited weight, namely the potential to prevent further earth collapse, to facilitate new planting and to provide security to the site. These other considerations attract limited weight.

46. Overall, the other considerations raised do not clearly outweigh the totality of the harm identified. Therefore, the very special circumstances necessary to justify development in the Green Belt do not exist.

Conclusion

47. The proposal conflicts with the development plan, and the Framework, and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

48. For the reasons given above the appeal is dismissed.

R Lawrence

INSPECTOR