



## Appeal Decision

Site visit made on 17 September 2024

**by M Cryan BA(Hons) DipTP MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> November 2024**

**Appeal Ref: APP/G2245/W/23/3329775**

**Rose Cottage Farm, Church Road, Hartley, Kent DA3 8DT**

- 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 Mrs Lisa Smith against the decision of Sevenoaks District Council.
- The application reference is 23/01126/FUL.
- The development proposed is the demolition of existing dwelling, removal of various structures/hardstanding, and erection of a replacement dwelling.

### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling, removal of various structures/hardstanding, and erection of replacement dwelling at Rose Cottage Farm, Church Road, Hartley, Kent DA3 8DT in accordance with the terms of the application, Ref 23/01126/FUL, subject to the conditions in the attached schedule.

### Procedural Matter

2. On 30 July 2024 the Government began a consultation on proposed changes to the National Planning Policy Framework ("the Framework"), including in respect of Green Belt policy. While I have had regard to these as a material consideration, given the changes are in draft there is still considerable doubt over the final wording, and implications of, any revisions to the Framework. They therefore carry very limited weight at this point and, as such, I have not sought additional comments from the main parties. Where I have referred to paragraphs of the Framework, the numbering is taken from the December 2023 version extant at the time of this decision being issued.

### Background and Main Issues

3. The appeal site lies within the Green Belt, and Green Belt issues formed the basis of the first reason for refusal on the decision notice issued by the Council. Two other reasons were also put forward, relating to the potential effect of the proposal on trees and on protected species. During the appeal the Council stated, on the basis of additional evidence put forward<sup>1</sup>, that it was satisfied that its concerns in respect of trees and protected species could be adequately addressed with suitably-worded conditions; it therefore no longer wished to maintain those reasons for refusal.

<sup>1</sup> A Tree Survey, Arboricultural Impact Assessment and Tree Protection Plan, and a Preliminary Ecological Appraisal

4. None of the evidence which has been put before me leads me to disagree with the Council's approach to those two matters. Accordingly, I consider that the main issues are:
- Whether the proposal would be inappropriate development within the Green Belt having regard to the Framework and any relevant development plan policies, and its effects on the openness of the Green Belt; and
  - If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

## Reasons

### *Whether inappropriate development in the Green Belt; openness of the Green Belt*

5. Rose Cottage Farm is a single-storey dwelling, set in a generously-sized plot on the western side of Church Road. The proposed development is the demolition of the existing dwelling, and the erection of a replacement; several of the various outbuildings and associated other structures which currently stand within the site would also be removed as part of the scheme.
6. The Government attaches great importance to Green Belts and the fundamental aim of national Green Belt policy, as set out in the Framework, is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 indicates that, other than for listed exceptions, the construction of new buildings in the Green Belt should be regarded as inappropriate. Paragraph 154 d) allows for "the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces".
7. Policy GB4 of the 2015 Sevenoaks Allocations and Development Management Plan ("the ADMP") sets out four criteria for replacement dwellings in the Green Belt. Of particular relevance in this case is criterion "d", which requires that "the total floorspace of the replacement dwelling, together with any retained extensions, alterations and outbuildings would not result in any increase of more than 50% above the floor space of the original dwelling (measured externally)". The Council acknowledges that, in referring to the "original dwelling", rather than the existing building to be replaced, there is some conflict between the policy and the more recent wording in the Framework. With that caveat, and noting that the Council's assessment of the scheme therefore related to the existing rather than "original" dwelling, the development plan sets out how "materially larger" will be interpreted locally.
8. The existing dwelling's footprint is approximately 138m<sup>2</sup>; this is the same as the external measurement of its floorspace as the living accommodation is on the ground floor. The proposed replacement floorspace has been calculated to be 218m<sup>2</sup> (by the appellant) and 232m<sup>2</sup> by the Council. The difference between the parties' figures appears to have arisen from how the area within the roof space at first floor level has been measured; as the Council's calculation is in line with the approach set out in its 2015 *Development in the*

*Green Belt* Supplementary Planning Document ("the SPD") I have relied on that figure here. The floorspace of the new dwelling would therefore be around 68% larger than that of the present building. It would also be a slightly broader and taller building, with front and rear gables which would give it an increased visual presence; the appellant accepts that it would "have a greater profile than that of the existing building".

9. The appellant has referred to the possibility of the existing dwelling being further enlarged by exercising permitted development rights. I address that matter in the "other considerations" section below, as unbuilt extensions are not part of the existing building and therefore not part of the baseline assessment. I find that the proposed dwelling would, in the Framework's terms, be materially larger than the building it would replace. It would not fall within the exception described at Paragraph 154 d) of the Framework.
10. The appellant also referred to Paragraph 154 g) of the Framework, which allows for the "limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use" provided it would not "have a greater impact on the openness of the Green Belt than the existing development". The SPD defines limited infilling as being "the completion of an otherwise substantially built-up frontage by the filling of a narrow gap"; the western side of Church Road which includes the appeal site is characterised by an essentially built-up frontage but, given the presence of the existing dwelling, there is no gap to fill.
11. Openness is the absence of development, and it has both spatial and visual aspects. As I have already described, the proposed dwelling would have a greater floor area, height, and width than the building it would replace. For the reasons I have set out in paragraph 8 above it is evident that the construction of a larger dwelling would lead to some loss of both spatial and visual openness.
12. The removal of two sheds, a log store and a car port at the rear of Rose Cottage Farm would result in some "concentration" of the built form towards the front of the site, which would go a small way towards compensating for the loss of visual openness caused by the new dwelling itself. There is insufficient information before me to come to the same view in respect of spatial openness. The proposed enlargement of the driveway and creation of a parking area at the front of the property would be visible from Church Road, though in spatial terms they would be offset by the reduction to the driveway and the removal of hardstanding at the rear; I consider that this aspect of the scheme would essentially have a neutral impact in terms of openness. Overall, the loss of openness of the Green Belt would be small, but as a result of this harm the development would not fall within the exception set out in Paragraph 154 g) of the Framework.
13. Taking all of this together, I conclude that the proposed development would be inappropriate development in the terms of the Framework. There would be conflict with the provisions of the development plan in respect of the Green Belt, notably Policy GB4 of the ADMP relating to the construction of replacement dwellings, the relevant provisions of which I have set out in paragraph 7 above. Inappropriate development is, by definition, harmful to the Green Belt.

### *Other considerations*

14. A lawful development certificate ("LDC") for extensions and alterations to the existing dwelling was granted in 2016<sup>2</sup>. That development has not yet been carried out, but it would enlarge the floorspace to around 199m<sup>2</sup>, an increase of 45% on the existing building. There is also the potential for a further rear extension and a side extension to be built using permitted development rights.
15. I note the Council's comment that the appellant has not sought an LDC for any of these further works, that it cannot be certain that they would comply with the relevant provisions of the General Permitted Development Order<sup>3</sup>, and that they are therefore no more than a theoretical prospect. However, the appellant has already gone to the effort and expense of securing the 2016 LDC, submitting a planning application in 2021 for the demolition and replacement of the existing dwelling (and lodging a subsequent, though unsuccessful, appeal to which I return below), as well as submitting this appeal scheme. Given their obvious desire to extend the property, it seems to me that there is a very real prospect of some form of scheme (either as allowed for by the 2016 LDC or otherwise using permitted development rights) being implemented in the event of my dismissing this appeal; it represents a realistic fallback position for the appellant.
16. It appears from the submitted drawings that the built footprint which would be achieved through permitted development would be considerably larger than that of the replacement dwelling proposed here. It also seems likely that the total built volume of the existing dwelling if extended fully through permitted development would be greater than that of the proposed replacement dwelling. While the Council commented that the LDC scheme "would maintain the single storey appearance of the existing dwelling", it would introduce a large dormer across the full width of the rear roof slope, and indeed the Council considered overall that the appeal scheme would not be harmful to the character or appearance of the area. Maximum use of permitted development rights, on the other hand, would be likely to lead to the appeal property taking on a sprawling, piecemeal and disjointed appearance. Given these considerations, I consider that the fallback position would be likely to be more harmful both to the openness of the Green Belt, and to the character and appearance of the area, than the proposed development; this is a matter which carries considerable weight in favour of the appeal scheme.
17. The removal of outbuildings on the site would slightly increase visual openness on the site, though as this would take place at the rear of the dwelling the impact on public views would be limited. As I have explained in paragraph 12 above, it is less clear if this element of the scheme would make a net positive contribution in terms of spatial openness. All the same, this modest improvement in visual openness would not happen under the fallback position; it is a further factor in favour of the appeal scheme, albeit one that I consider carries only limited weight. The benefits of the appeal scheme over the fallback position in respect of extensions and outbuildings would potentially be undermined if the proposed replacement dwelling were to retain these permitted development rights normally afforded to dwellinghouses.

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<sup>2</sup> LPA Ref: 16/03037/LDCPR – the development is described as "loft conversion including the installation of roof-lights to front. Side roof extension to accommodate rear dormer. Demolition of existing rear extension, and formation of larger single storey rear extension with roof lantern".

<sup>3</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

18. The proposal would provide a new dwelling that would be more energy efficient than the existing one, and so would support the transition to a low carbon future. This is a further factor in favour of the appeal scheme, although given the lack of detail in respect of the proposed energy efficiency measures it is one which carries only moderate weight in favour of the appeal scheme.

### **Other Matters**

19. The 2021 planning application referred to in the preceding section was for a development described as the “demolition of existing dwelling and erection of 2 storey chalet dwelling, formation of new driveway and bellmouth entrance to Church Road”. An appeal against the Council’s refusal of planning permission was dismissed in April 2022<sup>4</sup>. As I have done here, the Inspector in that case concluded that the proposal would represent inappropriate development in the Green Belt. They also found limited harm to the character and appearance of the area arising from an adverse impact on trees which, as I have explained in paragraph 3 above, is not an issue in this appeal.
20. The appellant has stated that the proposal before me “includes a significant reduction at first floor level” compared to the previous appeal scheme, although precise details are not before me. It is therefore not entirely clear from the evidence before me how the scale of the scheme considered by my colleague in 2022 compares to this one. It is notable, however, that the “other considerations” taken into account in 2022 did not include the LDC and permitted development fallback position, the matter presumably not having been brought to the Inspector’s attention. I have addressed this in the preceding section, and consider it carries considerable weight in favour of this appeal scheme. The facts of the case therefore justify my reaching a different overall conclusion to that of my predecessor.

### **Green Belt and Planning Balance**

21. The proposal would be inappropriate development in the Green Belt, conflicting with Policy GB4 of the ADMP. It would cause a small degree of harm to the openness of the Green Belt; nevertheless, Paragraph 153 of the Framework is clear that substantial weight should be given to any harm to the Green Belt.
22. The development would not cause unacceptable harm in respect of character and appearance, trees or protected species, and there would be no conflict with development plan policies on these matters. A lack of harm in these respects is a neutral factor in the overall balance.
23. In this case, I find that the other considerations which have been put forward clearly outweigh the harm by reason of inappropriateness. Looking at the proposal as a whole, I consider that very special circumstances exist which justify the development. The proposal would comply with the Green Belt aims of the Framework, and consequently would be acceptable.
24. The Council cannot demonstrate a 5-year supply of housing land at this time. As I have found that there are very special circumstances necessary to justify development in the Green Belt exist, there is not a clear Green Belt reason for refusing the development with reference to Paragraph 11 d of the Framework. No harm other than in respect of the Green Belt was put forward by the

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<sup>4</sup> PINS Reference APP/G2245/W/21/3278749

Council and, as I have already demonstrated, I consider that this would be significantly and demonstrably outweighed by the benefits of the appeal scheme.

### **Conditions**

25. I have considered the conditions suggested by the Council having regard to the tests in the Framework and the advice in the Planning Practice Guidance. I have also taken into account comments made by the appellant. Where necessary I have altered the ordering and proposed wording in the interests of clarity and effectiveness.
26. In addition to the standard time limit condition (1), in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans (2).
27. A condition requiring the installation of and compliance with tree protection measures ahead of demolition, site clearance and building operations (3) is necessary to protect trees on and around the site and to comply with Policy EN1 of the ADMP. Conditions relating to materials (4) and landscaping (7) are necessary to protect the character and appearance of the area.
28. A condition relating to the provision of an electric vehicle charging point (5) is necessary to support the use of low emission vehicles in accordance with Policy T3 of the ADMP; a condition relating to parking spaces (6) is necessary to ensure that adequate parking provision is made in line with Policies EN1 and T2 of the ADMP. A condition relating to biodiversity enhancements (8) is necessary to comply with Policy SP11 of the 2011 Sevenoaks Core Strategy and the provisions of the Framework.
29. A condition requiring the removal of existing outbuildings (9) is necessary as this element of the proposal has made a small contribution to my finding that very special circumstances exist. Similarly, while Paragraph 54 of the Framework indicates that "planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so", in this case the appeal scheme was presented as (and its acceptability is dependent on) it being an alternative to the use of permitted development rights. A condition removing rights relating to extensions, roof extensions, porches, outbuildings, and hard surfaces (10) is therefore clearly justified by the circumstances of the case, as I have explained in paragraph 17 above.

### **Conclusion**

30. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, I conclude that the appeal should be allowed.

*M Cryan*

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 the following approved plans and details:
  - Existing Site Plan – Drawing RCF-002 Rev A, February 2021
  - Proposed Floor Plans, Elevations and Roof Plan – Drawing RCF-003 Rev C, January 2021
  - Proposed Site Plan – Drawing RCF-004 Rev E, February 2021
- 3) No demolition, site clearance or building operations shall commence on site until tree protection measures have been installed in full accordance with the details contained with the submitted Tree Survey, Arboricultural Impact Assessment and Tree Protection Plan produced by The Mayhew Consultancy Ltd. Within all fenced areas, soil levels shall remain unaltered and the land kept free of vehicles, plant, materials and debris. The protection measures shall remain in situ throughout the duration of the demolition and construction processes.
- 4) No development shall take place above the damp proof course until full details and samples of the materials of the building have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.
- 5) No development shall take place above the damp proof course until details of the location of an electric vehicle charging point have been submitted to and approved in writing by the local planning authority. The approved charging point shall be installed prior to the first occupation of the development and shall be maintained thereafter.
- 6) Prior to the first occupation of the development, the parking spaces shown on drawing RCF-004 Rev E shall be provided in full and shall be so maintained and available for use as such at all times.
- 7) Prior to the first occupation of the development, further details of both hard and soft landscaping, including details of any hard surfacing, shall be submitted to and approved in writing by the local planning authority. The approved hard landscaping scheme shall be implemented prior to the occupation of the development hereby approved and the soft landscaping shall be implemented not later than the first planting season following the first occupation of the dwelling.
- 8) Prior to the first occupation of the development hereby approved, details of how the development will enhance biodiversity will be submitted to, and approved in writing by, the local planning authority. The approved details will be implemented prior to first occupation of the dwelling and thereafter retained.
- 9) The development hereby permitted shall not be occupied until the outbuildings identified for removal ("garden shed", "log store", "car port" and "large shed") have been removed in accordance with details shown on the approved plans.

- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, B, D, E or F of Part 1 of Schedule 2 to the Order shall be undertaken.