



Appeal Decision

Site visit made on 15 November 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th December 2024

Appeal Ref: APP/G2245/W/23/3333490

Woodland Park, Three Gates Road, Fawkham, Kent DA3 8NZ

- 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 B Shepherd against the decision of Sevenoaks District Council.
 - The application Ref is 23/01868/FUL.
 - The development proposed is a storage building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published. This decision refers to the Framework published December 2023, unless stated otherwise.
3. The address used above is taken from the application form and appeal form.

Main Issues

4. 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;
 - Effects on ancient woodland and protected species;
 - Effects on highway safety, and;
 - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate

5. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state

that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate development, but lists exceptions in paragraph 154.

6. The appellant has confirmed that the proposed building would be used for storage in connection with the existing use of the land, which the Council accept includes an open recreational use. The proposal could therefore fall to be considered under exception 154b) which relates to the provision of appropriate facilities for outdoor sport or recreation, among other things, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
7. I have no strong reason to consider the building would not be appropriate for its intended purpose to provide storage. It is therefore necessary to establish whether the proposal would preserve the openness of the Green Belt or conflict with the purposes of including land within it. The Courts have established that the openness of the Green Belt has a spatial as well as a visual aspect, and 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.
8. The building would be positioned within a clearing in the surrounding woodland, among a cluster of existing buildings and structures, including mobile homes and stretches of timber fencing. The proposed building would also be positioned close to a vast electricity pylon. The openness of the area is therefore characterised by these features.
9. The proposed building would be of a greater scale and footprint than those others nearby, comprising 132sqm with a pitched roof rising to a height of 5m. As such it would considerably reduce the spatial aspect of the site's openness. Visibility into the site is limited to views from School Lane and this would inevitably vary throughout the year as the extent of foliage on the boundary hedgerow changes. In those views the proposal would be seen in the context of the other buildings and structures. It would, nonetheless cause some reduction in the visual aspect of openness given its scale. For these reasons the proposal would not preserve the openness of the Green Belt. There would also be a degree of conflict with the purposes of including land in the Green Belt through encroachment into the countryside. For these reasons the proposal would not meet the exception to inappropriate development at paragraph 154b).
10. Paragraph 154g) relates to previously developed land. However, even if the proposal were considered under this exception, it would have a greater impact on the openness of the Green Belt than the existing development for the reasons set out above. That exception would not, therefore, be met.
11. In conclusion on this main issue, the proposal would be inappropriate development in the Green Belt by definition. It would also cause harm to the openness of the Green Belt, although this would be at the lower end of the scale given the proposal's context.

Ancient Woodland and Biodiversity

12. The proposed building would be located within approximately 10m of Horton Kirby ancient woodland. This area also comprises a Local Wildlife Site and priority habitat. The Framework at paragraph 186 states that development resulting in the loss or deterioration of irreplaceable habitats, such as ancient woodland, should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. Natural England advise that such areas are a valuable natural asset, important for features including wildlife, soils, carbon capture and storage. It details direct and indirect effects of development which can cause the loss or deterioration of ancient woodland, which can include damage to their soils and flora including from soil compaction, increasing disturbance and breaking of connections between areas of woodland. Natural England advice goes on to recommend that a buffer zone of at least 15 metres from the boundary of the woodland should be imposed to avoid root damage.
13. The proposed development would be located within a clearing in the woodland and close to other structures. However, given its proximity to the ancient woodland and as a new permanent structure, it has the ability to have impacts upon it. While the buffer zone is a recommendation, based on the information before me it cannot be established that the proposal would not have harmful effects on the nearby ancient woodland. The deterioration of this habitat, as described in paragraph 186 of the Framework, cannot therefore be ruled out. There is not evidence of any wholly exceptional reasons for the development, nor a suitable compensation strategy.
14. The woodland is also designated for its importance to wildlife. The Council's Ecologist refers to local records of badgers which may use the woodland or its associated edge habitats, and the notable length which badger tunnels can extend. I have no strong reason to doubt those assertions and there is not substantive evidence to demonstrate that the proposal would have acceptable effects on badgers, which are a protected species.
15. Given the nature of the existing buildings and structures, the limited disturbance by artificial lighting, together with the nearby wildlife designations, there is a reasonable likelihood of bat roosts being present close to the area of the proposed development. The proposal could therefore present effects on bat species and there is similarly not substantive evidence to suggest that those effects would be acceptable.
16. I have considered whether these matters could be addressed by the imposition of planning conditions if the appeal scheme were otherwise acceptable. While no wording of such conditions has been provided, given the absence of evidence relating to the extent of any effects, it cannot be established that any adverse effects of the development could be made acceptable at the condition stage.
17. As a consequence, and in the absence of evidence to the contrary, the proposal could have harmful effects on the designated ancient woodland as well as protected species which may occupy the site. The proposal would conflict with Policy SP11 of the Sevenoaks Core Strategy 2011 insofar as it relates to biodiversity and with the provisions of the Framework where it relates to irreplaceable habitats.

Highway Safety

18. Access to the site currently exists onto School Lane, which is a narrow track bound tightly by fencing and hedgerows. As above, the appeal documents now confirm the building would be used in connection with the existing use and the site would not generate additional vehicle movements as a result of the proposal. On this basis, the proposal would be acceptable in terms of its effects on highway safety, and would comply with Policy EN1 of the Sevenoaks Allocations and Development Management Plan 2015 insofar as it requires satisfactory access for vehicles and pedestrians. The proposal would also comply with the Framework where it refers to highway safety.

Other Considerations

19. The Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances 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.
20. It has been found that the proposal would cause harm to the Green Belt. Despite being at the lower end of the scale of harm, I nonetheless give this harm substantial weight, as required by the Framework. The potential harm to the irreplaceable habitats and protected species is also given significant weight, given the provisions set out in the Framework.
21. The proposal would provide facilities to support the existing recreational use of the site. This could provide some social and economic benefits which would weigh in favour of the proposal. In the absence of information on this matter, this attracts modest weight in favour of the development. I have had regard to the provisions of the consultation version of the Framework, which alters the level of harm accepted as part of the exception to inappropriate development relating to previously developed land. However, given the status of this document I give this limited weight at this time.
22. Overall, there are not other considerations of sufficient weight which would clearly outweigh the harm to the Green Belt and to irreplaceable habitats and protected species. As a consequence, the very special circumstances necessary to justify the proposal do not exist.

Conclusion

23. For the reasons given, having regard to the development plan and other relevant material considerations including the Framework, the appeal is dismissed.

C Shearing

INSPECTOR