



Appeal Decision

Site visit made on 11 November December 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Appeal Ref: APP/M2270/W/24/3343074

Land South of Nevill Court, Tunbridge Wells, Kent, TN4 8NL

Easting 556873 : Northing 138808

- 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 Robert Legon (Legon Projects Ltd) against the decision of Tunbridge Wells Borough Council.
 - The application Ref is 23/02464/FULL.
 - The development proposed is the conversion of building to dwelling and change of use to create new residential curtilage with access.
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Decision

1. The appeal is dismissed.

Application for costs

2. A separate application for costs was made by Mr Robert Legon against Tunbridge Wells Borough Council. That application is the subject of a separate decision.

Preliminary Matter

3. I have used the description of development given in the Council's decision notice and appellant's appeal forms. These omit reference to the solar panels which were removed from the proposal prior to the Council's decision.

Main Issues

4. The main issues are:
 - a. whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - b. the effect of the proposal on the openness and the purpose of the Green Belt;
 - c. the effect of the proposed development on the character and appearance of the area; and
 - d. 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 Development

5. The National Planning Policy Framework (the Framework) advises that in the Green Belt, development should be regarded as inappropriate. Paragraphs 154 and 155 of the Framework do however set out exceptions where development in the Green Belt might not be considered as inappropriate.
6. Policy MGB1 of the Tunbridge Wells Borough Local Plan 2006 (Local Plan) and Core Policy 2 of the Tunbridge Wells Borough Core Strategy Development Plan Document 2010 (Core Strategy) do not exactly coincide with the full list of exceptions set out in the Framework. However, they do broadly reflect its approach in seeking to protect the Green Belt from inappropriate development.
7. The Council considered the proposal against what are now Paragraphs 154(g) and 155(d) of the Framework. The former allows for the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development. The latter relates to the re-use of buildings provided that the buildings are of permanent and substantial construction, and is subject to the proviso that the development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. The appellant does not identify any other exceptions to inappropriate development set out in Paragraphs 154 and 155 as relevant to the proposal.
8. The proposal involves the re-use of an existing building. Based on the evidence before me and my own observations, the building is of permanent and substantial construction. As such, the main considerations in respect of Paragraph 155(d) are whether it fulfils the two further tests relating to openness and purposes.
9. Neither of the main parties puts forward a clear assessment as to whether the site could also be considered to be previously developed land (PDL). However, the proposed development extends beyond the existing building and concrete apron, and onto areas of undeveloped land. The entire proposal would not therefore relate to PDL. However, even if it were to be assessed under Paragraph 154(g), the main consideration would similarly be a test of openness.
10. The Planning Practice Guidance notes at Paragraph: 001 (Reference ID: 64-001-20190722) that a number of factors may be taken into account in assessing the impact of a proposal on the openness of the Green Belt. These include both spatial and visual aspects, as well as the duration and remediability of the development. The degree of activity likely to be generated, such as traffic movement, may also be relevant.
11. The existing building on the site is low in height and designed originally as a stables. Visually, the openness of the Green Belt is extremely evident around the property. It has a rural, parkland character of a predominantly open field plus tree belts. Even given the separation distance and that some views are screened by vegetation, the site is clearly visible from Nevill Court.

12. The proposed alterations to the building itself would be minimal, primarily consisting of alterations to windows and doors. Consequently, these alterations would not have an adverse effect on the openness of the Green Belt and would not conflict with the purposes of including land within it.
13. However, in addition to the re-use of the existing building, the proposed development would also involve the creation of a new curtilage and associated development, principally the paved area to the side and rear of the building and a pool to the rear. The hardstanding, which would be significantly in excess of the concrete apron currently serving the building, would provide a patio and parking area to serve the dwelling. That a building might be expected to have a curtilage and that it would be used for purposes incidental to the host building, does not absolve me from making an assessment of its effects in relation to this main issue.
14. Given the extent of the curtilage, domestic items stored on the site could be visible, such as garden structures, garden equipment, tables and chairs or clothes drying. All these factors would have a small but inevitable visual impact on the Green Belt when compared to the existing circumstances. The nature of a residential property, including such factors as the level of activity, comings and goings as well as being lit at night, with light emitting from windows would, in comparison with the existing use, have a more intense visual impact on the openness of the area.
15. The pool would be flush with the ground level. However, it would necessarily involve works that would result in a more extensive development than that which currently exists on the site. The proposed development, would, in spatial terms, have a small but nonetheless greater effect on the openness of the Green Belt than the existing development.
16. The submitted drawings indicates a shingle finish access track to Nevill Court. The appellant's statement suggests that the access would be limited to simply reinforcing the existing wheel runs as necessary. It is also suggested that this should be considered in the light of the existing use of the building and the bringing in of machinery to be stored at the existing building.
17. Putting aside that the use of the building has not been lawfully established, it seems to me that using it for storing machinery is likely to entail a different type of vehicle and frequency of use to that proposed. In reality, given the incline from the building to Nevill Court, any permanent resident of the dwelling would very quickly wish to create a more robust and substantive access, particularly during winter months and periods of inclement weather.
18. A condition that sought to limit any works to just the reinforcement of the access, would be difficult to define or enforce and the mix of materials would similarly be difficult to control. Even if a condition could be sufficiently precise, the regularity of use would be likely to increase the need for reinforcement as well as being an inhibitor to the growth of grass along the route. As such, it would quickly become a very obvious feature across the existing field.
19. Even if the access were to be considered an engineering operation under the terms of Paragraph 155(b), a test of openness would still apply. Whilst from outside of the site, the visual presence of the access might be localised, given its length there would be some degradation to the existing visual levels of openness such that openness would not be preserved.

20. Consideration of the openness of the Green Belt does not necessarily mean that no change can occur. However, taking all of the above into consideration, there will collectively be an adverse impact on openness to the extent that there would be a greater impact on the openness of the Green Belt than the existing development. Even if I were to have considered the proposal under Paragraph 154(g), given the adverse effects, openness would not be preserved.
21. The site is outside of the development boundary of Tunbridge Wells and so in planning policy terms the site would appear to be open countryside. There is no planning permission or lawful development certificate to signify the use of the building or the appeal site as a whole. The proposed curtilage around the building, whilst not large in comparison to the size of the field, would nonetheless be sizable in comparison to the proposed dwelling and extend well beyond the existing concrete apron. This would evidently be an encroachment into the countryside.
22. Overall, I consider that the proposal would cause harm to the openness of the Green Belt and would conflict with the purposes of including land within the Green Belt. It would therefore be inappropriate development in the Green Belt.
23. Consequently, there is conflict with Policy MGB1 of the Local Plan and Core Policy 2 of the Core Strategy. The proposal would also not be in accordance with the provisions of chapter 13 of the Framework, which are concerned with the protection of Green Belt land.
24. Framework Paragraph 152 confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. As per Paragraph 153, any harm to the Green Belt attracts substantial weight.

Character and Appearance

25. The existing building by virtue of its size and position has a limited visual effect. However, the field in which is located has a rural, parkland character which makes a positive contribution to the wider spacious character of the area. The introduction of a formal domestic curtilage and a long access across an open field would detract from the contribution that the site currently makes to the character of this area.
26. Furthermore, it seems to me that a dwelling in this location would inevitably lead to future occupiers wishing to take advantage of the views to the south. Tables, chairs, parasols, garden structures and equipment etc. could reasonably be expected to be utilised, which would in their own small way further undermine the spacious character of the site.
27. The appellant points to the option of removing permitted development rights to control small buildings and extensions. However, this would not stop garden paraphernalia from being used and any limitations on outbuildings would merely prevent such items from being stored and so lead to them becoming semi-permanent features, thereby further adding to the harm caused.
28. The proposal would cause harm to the character and appearance of the area. Accordingly, it would be contrary to Policies H13, EN1 and EN25 of the Local Plan and Policies 4, and 14 of the Core Strategy which, amongst other things, seek to minimise the impact of development on the landscape, ensure it

respects its context and does not cause harm to the local character of the area. The proposal would also be contrary to the Framework which, amongst other things, seeks to ensure developments are sympathetic to local character, including landscape setting.

Other Matters

29. When the planning application was determined, the Council was unable to demonstrate a 5-year supply of deliverable housing land. Since then, a new Local Plan has advanced beyond the Regulation 18 stage and is now being examined. As such, the Council is required to demonstrate a 4-year supply.
30. The current position is said to be 4.5 years supply although the appellant highlights some issues regarding longer term allocations. Whilst there is no substantive evidence before me that the current supply is less than 4 years, I am mindful that 4 years requirement is a minimum and being above that level should not be seen as a cap on future provision.
31. The economic and social benefits of a single dwelling would be modest. The site is walkable to the town centre, but its position and access arrangements suggest that residents would use a car for most trips, albeit they would be relatively short journeys.
32. The proposal would remove what is said to be a builder's store from the site. However, the lawful use of the building is currently unclear and therefore at this stage any positive weight I could give to the matter would necessarily be limited.
33. The situation at Cottage Farm has a number of similarities with the appeal proposal. However, this other site benefited from a curtilage, was close to other properties and some existing buildings on the site were to be removed as part of the scheme, thereby reducing the amount of development on the site. These differentiate the Cottage Farm decision from the scheme before me and so it does not lead me to allowing the current appeal.

Green Belt Balance

34. I have found the scheme to represent inappropriate development in the Green Belt. The Framework requires me to give this harm substantial weight.
35. On the other hand, the benefits outlined in support of the scheme carry more limited weight. These other considerations do not clearly outweigh the substantial harm I have identified to the Green Belt. Consequently, the very special circumstances necessary to justify the proposal do not exist.

Planning Balance and Conclusion

36. The proposal would cause harm to the Green Belt and to the character and appearance of the area and would conflict with the development plan taken as a whole. There are no material considerations, including the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

Stewart Glassar

INSPECTOR