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## Appeal Decision

Site visit made on 25 February 2025

by **P Terceiro BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 April 2025

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**Appeal Ref: APP/G2245/W/24/3351967**

**Perran, Charles Road, Badgers Mount, Sevenoaks, Kent TN14 7BB**

- 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 N de Palma against the decision of Sevenoaks District Council.
  - The application Ref is 24/00774/HYB.
  - The development proposed is a hybrid planning application to consist of: a) Full planning application for demolition of existing dwelling and outbuildings. Sub division of land with construction of replacement dwelling with associated landscaping. b) Outline application for one dwelling with all matters reserved.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for costs has been submitted by Mr N de Palma against Sevenoaks District Council. This is the subject of a separate decision.

### Preliminary Matters

3. In the interests of clarity, I have used the description of development from the Council's decision notice in the banner heading above. Such description has been adopted by the appellant in their appeal form.
4. In part, the original application was submitted in outline for the construction of one dwelling with all matters reserved for future consideration. I have determined the appeal as such, and any details in relation to the reserved matters have been considered on an illustrative basis.
5. The appellant has submitted a Preliminary Ecological Assessment & Biodiversity Net Gain Plan (PEA) alongside the appeal. The planning appeals procedural guidance<sup>1</sup>, confirms that, if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
6. However, in this case, the details were submitted in response to the Council's reason for refusal. The parties have had the opportunity to comment on this information through the appeal process. As such, I am satisfied that no prejudice would occur to any party as a result of my consideration of their content. For the

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<sup>1</sup> Procedural Guide: Planning appeals – England.

avoidance of doubt, my decision on this appeal is based on the PEA submitted with this appeal.

7. The revised National Planning Policy Framework (the Framework) was published on 12 December 2024. The main parties were invited to provide comments on this matter and the comments received have been taken into account in my determination of the appeal.
8. My attention is drawn to a previous appeal decision<sup>2</sup> for the creation of an infill plot and the erection of a detached dwelling within the site. I have had regard to that decision only insofar as it is relevant to my assessment of the main issues in this case, but I have determined the appeal based on the evidence and the details of the proposal before me.

### **Main Issues**

9. The main issues are:
  - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework; and
  - the effect of the proposed development on ecological interests.

### **Reasons**

#### *Whether inappropriate development*

10. The appeal site is located within the Green Belt. The Government attaches great importance to Green Belts. 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.
11. Paragraph 154 of the Framework sets out that development in the Green Belt is inappropriate unless one of the exceptions listed applies. One such exception, at paragraph 154d), is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Another exception, at paragraph 154g), is the limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt.
12. The application submitted in full seeks to sub-divide the existing plot and construct a replacement dwelling, which would be located on the side garden space belonging to Perran. The Council finds that this element of the proposal, when assessed independently, would not be inappropriate development in the Green Belt, and would accord with paragraph 154d) of the Framework. On the evidence before me, I see no reason to disagree.
13. The application submitted in outline relates to the construction of a new dwelling in the area of the site where the existing dwelling is located. The site accommodates a dwelling of a substantial size and outbuildings, and the parties do not dispute that the site constitutes previously developed land. Although the size and scale of the dwelling proposed under the outline application are not known at this stage,

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<sup>2</sup> Appeal Ref: APP/G2245/W/22/3297714

taken together with the replacement dwelling, there would likely be harm to the openness of the Green Belt in both spatial and visual terms. However, given that the land is already developed and the surrounding context, it is unlikely that the proposal would result in substantial harm to the openness of the Green Belt. As such, the outline proposal would not be inappropriate development in the Green Belt and would accord with paragraph 154g) of the Framework. My findings are consistent with those of the Council in its latest comments.

14. Drawing all the above together, the proposal would not be inappropriate development in the Green Belt, in accordance with the terms of the Framework. On this basis, there is no need to consider the other exceptions cited.

#### *Ecological interests*

15. There is an area of ancient woodland directly opposite the site which is also covered by a Tree Preservation Order. For development affecting ancient woodlands Natural England advise, amongst other things, that proposals should have a buffer zone of at least 15m from the boundary of the woodland to avoid root damage, and planning permission should be refused if development will result in the loss or deterioration of ancient woodland unless there are wholly exceptional reasons, and a suitable compensation strategy exists.
16. The PEA indicates that part of the proposed development, including the paved forecourt to the replacement dwelling on plot 1, would be located within the 15m buffer zone. Consequently, a portion of modified grassland/introduced shrub within 15m of the ancient woodland would be permanently paved over.
17. However, there is limited detail within the PEA in terms of assessing the potential impact of the proposed development on the ancient woodland. Indeed, the PEA provides little detail regarding any potential impacts from excavation / root compaction within the 15m buffer zone, so I am unable to fully assess the direct effect of the proposal on the ancient woodland. As such, there is insufficient information before me to enable me to be satisfied that the protection of the ancient woodland can be ensured by means of a planning condition.
18. The PEA identified evidence of bats in the buildings on site and several of the buildings have potential to support a bat roost and therefore the site is considered as having a moderate potential to support commuting and foraging bats. Additionally, the PEA found that several of the trees on site contain small features that have potential to support a small number of bats. The PEA advises that further bat emergence surveys are required on some of the buildings, in order to provide information on the presence/ absence of bat roosts.
19. In light of the above, insufficient information has been provided to demonstrate that the proposal would not have an unacceptable adverse effect on protected species. Current advice<sup>3</sup> states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant considerations may not have been addressed in making the decision. Given my responsibilities to the protected species, the necessary confirmation of

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<sup>3</sup> Paragraph 99 of Circular 06/2005: Biodiversity and Geological Conservation and 9.2.4 BS 42020:2013 Biodiversity Code of Practice.

the accurate extent of bats on site and the formation of potentially sufficient or proportionate mitigatory measures are matters that cannot be left to a condition.

20. Without any certainty in relation to the above matters, I cannot conclude that the proposal would have no harmful effect on ecological interests. It would therefore fail to accord with Policy SP11 of the Local Development Framework Core Strategy 2011 and with Policy EN1 of the Sevenoaks Allocation and Development Management Plan 2015, insofar as these policies seek to conserve the biodiversity within the District and support development with a layout that respects the surrounding area and does not result in the loss of green infrastructure.

### **Other Matters**

21. The site lies within the Kent Downs National Landscape (NL). Section 245 of the Levelling-up and Regeneration Act 2023 places a duty upon me to seek to further the statutory purpose of the NLs, which is to conserve and enhance the natural beauty of the area of outstanding natural beauty. The special qualities of this part of the Kent Downs NL include blocks of woodland interspersed with agricultural fields, scattered settlements, and undulating topography.
22. The surrounding area has a semi-rural and verdant appearance and feel but is not devoid of dwellings and associated domestic uses and paraphernalia. The replacement dwelling would be of a similar appearance to the existing dwelling and the indicative plans for the outline scheme show that the dwelling could be accommodated on site in such a manner that would respect its surroundings. As such, the proposal could be constructed in a sympathetic manner that would not harm the landscape character and scenic beauty of the NL.

### **Planning Balance**

23. For the reasons set out above, the proposal would conflict with the development plan read as a whole.
24. The Council sets out that it cannot demonstrate a 5-year supply of deliverable housing sites. In such circumstances, the provisions of paragraph 11d) i. of the Framework should be applied. It states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. This includes policies relating to irreplaceable habitats, such as the ancient woodland opposite the site. Given such, I have not gone on to consider the scheme against the requirements of paragraph 11d) ii).
25. Set against the conflict with the development plan, the scheme would contribute to boosting the supply of homes within the borough. However, given that the proposal would deliver one net additional dwelling, this benefit would attract limited weight in favour of the proposal and would not justify the adverse impacts in relation to ecological interests.

## **Conclusion**

26. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

*P Terceiro*

INSPECTOR