
Appeal Decision

Hearing held on 3 December 2024

Site visit made on 3 December 2024

by **J Hobbs MRTPI MCD BSc (hons)**

an Inspector appointed by the Secretary of State

Decision date: 21 January 2025

Appeal Ref: APP/G2245/W/24/3351517

Land east Of Chirside House, London Road, West Kingsdown, Kent TN15 6EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Susan Welsh against the decision of Sevenoaks District Council.
 - The application Ref is 24/00211/OUT.
 - The development proposed is 3 serviced plots for Self and Custom Housebuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner above is taken from the application form. However, I have removed the phrase “Outline planning application (some matters reserved) for ...” As this is not an act of development.
3. The planning application subject to this appeal was an outline planning application with all matters reserved for subsequent approval, other than access. The appellant sought approval for the access between the appeal site and the public highway only.
4. Detailed in a list appended to this decision are five pieces of late evidence submitted by the appellant which I considered as part of my assessment of the appeal proposal. Most are public documents and others were uploaded with the appeal documentation on the Council’s website. I am therefore satisfied that the Council and interested parties have had adequate opportunity to review them. The public documents were also published after the submission of the appeal. As such, the appellant could not have included them with their original submission. I refused to accept a further two pieces of late evidence, as the material was repetitious.
5. A third revision of the Statement of Common Ground (SoCG) was submitted by the appellant on the day of the Hearing. Given there were no exceptional circumstances for its late submission and the time it would take the Council and myself to review the document it was not accepted. The parties agreed as the second version of the SoCG was submitted after the deadline specified in the appeal start letter that it also should not be considered.
6. The revised National Planning Policy Framework (the Framework) was published on 12 December 2024. I sought submissions from the parties on this matter. I have considered their additional submissions alongside their original representations when determining the appeal.

7. Following the Hearing, the Government published the results of the 2023 Housing Delivery Test (HDT). Over the preceding three years 44% of the Council's housing requirement was delivered, this has decreased from 51% which was the measurement in the 2022 HDT. The consequence of the underperformance is that the presumption in favour of sustainable development still applies. The appellant has commented on the updated HDT result as part of their response to the consultation on the revised Framework. Nevertheless, it was not necessary to consult the Council on the 2023 HDT as the position has not changed in that the presumption in favour of sustainable development applies and the result of the updated HDT is not materially different.

Background and Main Issues

8. During the Hearing the parties agreed that the proposal represented inappropriate development in the Green Belt. Following the publication of the revised Framework, it is a disputed matter. Therefore, it forms part of the main issues of the appeal.
9. The Council expressed concerns with the submitted Unilateral Undertakings (UUs) which sought to secure the Self-Build and Custom Housebuilding plots, within its Appeal Statement. Following discussions during the Hearing, the appellant was given the opportunity to amend the UU. The appellant has not amended the UU. Therefore, it is still a matter of dispute and forms part of the main issues of the appeal.
10. 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;
 - 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; and,
 - whether a mechanism to secure the provision of Self-Build and Custom Housebuilding plots is required and, if so, has an appropriate mechanism been provided.

Reasons

Green Belt

11. The Framework indicates that the fundamental aim of Green Belt policy is to prevent urban sprawl and that inappropriate development is harmful to the Green Belt. Policy LO8 of the Allocations and Development Management Plan, Local Plan, February 2015 (LP), states that the extent of the Green Belt will be maintained. Paragraph 155 of the Framework identifies that the development of homes in the Green Belt should not be regarded as inappropriate subject to the specified criteria.
12. Criterion a) specifies that the development would need to utilise grey belt land and not fundamentally undermine the purposes of the remaining Green Belt across the area of the plan. The Framework defines Grey Belt as previously developed land in the Green Belt and/or land that does not strongly contribute to any of purposes a), b) or d) in paragraph 143.

13. The appeal site is located on the edge of West Kingsdown which is identified as a village within LP Policy LO7. The village is modest in size and is much smaller than other settlements in the district. The village does not connect to a larger urban conurbation and is surrounded by Green Belt. The appeal site is therefore not contributing to checking the unrestricted sprawl of a large built-up area. The proposal would extend West Kingsdown in a south easterly direction. The nearest settlement in that direction is Kemsing which is a significant distance away and there are large areas of undeveloped land between the two settlements. As such, the appeal site makes a negligible contribution towards preventing the merging of the two settlements. There are no conservation areas within West Kingsdown and there is no evidence to indicate that West Kingsdown is a historic town. As such, the appeal site does not strongly contribute to any of purposes a), b) or d) in paragraph 143 of the Framework. It can therefore be classified as Grey Belt land.
14. A large area of Sevenoaks district is Green Belt land, and the appeal site represents a very small proportion of this land. Whilst the proposed development may reduce the contribution neighbouring land is making toward the purposes of the Green Belt, large swathes of Green Belt land within the district would be unaffected. As such, the proposal would not fundamentally undermine the purposes of the remaining Green Belt across the area of the plan.
15. In applications involving the provision of housing, footnote 56 of the Framework indicates that an unmet need for the type of development proposed is where there is a lack of a five-year supply of deliverable housing sites, amongst other matters. The parties agree that the Council cannot demonstrate a five-year supply of deliverable housing sites and that the Council is not meeting its statutory duty with regard to Self-Build and Custom Housebuilding. Therefore, the proposal could meet an unmet need for the type of development proposed.
16. West Kingsdown accommodates several services and facilities including a school, a medical centre, a church, and public houses. There is also a bus stop immediately outside the appeal site. However, given the limited extent of facilities and services, it is likely that future occupiers would need to travel further afield to meet some of their day-to-day needs. These journeys could be undertaken on public transport, but future occupiers would be somewhat reliant on the use of private motor vehicles.
17. Nevertheless, I am mindful of paragraph 110 of the Framework which indicates that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. West Kingsdown is a village in a rural area. It is expected that the opportunity to maximise sustainable transport solutions would be limited. As such, the proposed development would be in a sustainable location.
18. The 'Golden Rules' set out within paragraph 155 d) do not apply as the proposed development is not 'major development'. Therefore, the proposal would accord with paragraph 155 of the Framework, and it would not be inappropriate development in the Green Belt. The proposal would therefore comply with LP policies LO1 and LO8 which indicate that development will only take place where it is compatible with policies for protecting the Green Belt.

19. The Lee Valley v Epping Forest District Council Judgment¹ outlines where the development is not inappropriate in the Green Belt, applying the exceptions identified in the Framework, it should not be regarded harmful to the openness of the Green Belt. As the proposed development is not inappropriate development, as per paragraph 155 of the Framework, an assessment on the effect of the proposed development on the openness is not required. Likewise, very special circumstances do not need to be demonstrated for the proposal to be considered acceptable.

Self-build and custom housebuilding

20. The description of development indicates that the proposal is for 3 serviced plots for Self and Custom Housebuilding. The Planning Practice Guidance² advises that if a relevant authority is recording a development permission as a suitable permission it must be satisfied that the permission meets the legislative requirement. The description of development alone would not be sufficient for the Council to be satisfied that the proposal could count toward meeting its statutory duty of granting permission of enough serviced plots to meet demand. Therefore, an obligation or condition is necessary.
21. Two UUs have been submitted by the appellant. They are both directly related to the development and are fairly and reasonably related in scale and kind to the development. Therefore, the obligations would meet the three tests as outlined within Regulation 122 of The Community Infrastructure Levy Regulations 2010. However, one of the UUs is not signed or dated and is therefore not legally sound. The second is dated 10 October 2024 and is signed by the appellant, who is identified as the owner of the land. Nevertheless, it is flawed in terms of its effectiveness.
22. Firstly, it would only come into effect if planning permission were to be granted by the Council and not through the appeal process. Secondly, it only requires the 3 serviced plots to be marketed as Self-Build and Custom Housing plots for a period of 18 months. Once that period has expired and if contracts for sale have not been exchanged the restrictions and obligations specified within the UU would no longer apply. The plots could then be sold on the open market as completed dwellings. Therefore, even if the obligation took effect, it would not provide the necessary assurance or certainty to the Council that the proposed development would meet the definition of self-build or custom build homes. Nor would it assist the Council with meeting its statutory duty with regard to granting sufficient permissions to meet demand for Self-Build and Custom Housebuilding.
23. The parties agree that a condition could be attached to any permission which would restrict the construction of any dwelling other than those which meet the definition as set out within the Self-Build and Custom Housebuilding Act 2015. The proposed condition does not require any information to be submitted to the Council. As such, the monitoring and/or enforcement of this condition would be extremely difficult given the end development would appear the same as open market housing. Although the Council agree with the inclusion of the proposed condition, it would place an unreasonably onerous expectation on the Council to monitor and/or enforce the condition. As such, the proposed condition would not meet the tests set out in paragraph 57 of the Framework.

¹ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

² Self-build and custom housebuilding Paragraph: 038 Reference ID: 57-038-20210508

24. In conclusion, a planning obligation and/or condition is required to secure the provision of Self-Build and Custom Housebuilding plots. However, neither a legally sound nor effective obligation has been submitted with the appeal. Also, the suggested condition would not be suitable for the reasons given above. Therefore, an appropriate mechanism to secure the provision of Self-Build and Custom Housebuilding plots has not been provided.

Conclusion

25. The proposal would comply with the development plan. Nevertheless, a mechanism is necessary to secure the provision of Self-Build and Custom Housebuilding plots to ensure the proposal would comply with the description of development. An appropriate mechanism has not been provided therefore the appeal should be dismissed.

J Hobbs

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr James Hammond Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ashley Bid Senior Planning Officer/Case Officer

Ms Emma Coffin Senior Planning Policy Officer

INTERESTED PARTIES:

Ms Josephine Watchorn Member of West Kingsdown Parish Council

LIST

DOCUMENTS:

An analysis of the Sevenoaks Green Belt Assessment, Written Ministerial Statement, and the emerging National Planning Policy Framework.

A copy of the letter sent from the Minister of State for Housing and Planning to the Chair of Homes England dated 30 September 2024.

Appeal Decisions for linked appeals at Cranford Avenue, Wickford, Essex, issued on 19 November 2024.

A copy of Sevenoaks District Council's response to the National Planning Policy Framework Consultation.

A copy of a news item entitled "Council expresses concerns about Government plans to increase housing targets and build on the Green Belt", published by the Council on 10 October 2024.