
Appeal Decision

Hearing held on 6 April and 25 May 2016

Site visit made on 6 April 2016

by Claire Victory BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 August 2016

Appeal Ref: APP/B1930/W/15/3141193

54 Oaklands Lane, Smallford, St Albans AL4 0HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Barba against the decision of St Albans City & District Council.
 - The application Ref 5/15/0644, dated 27 February 2015, was refused by notice dated 23 June 2015.
 - The development proposed is the demolition of 54 Oaklands Lane and Radio Nursery comprising of 8 dwellings, packhouse, vehicle repair and maintenance workshop, glasshouses and the removal of contractor's yard. Construction of 28 houses with garages with access from Oaklands Lane.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved except access. A site plan and street scene were marked as illustrative and I have dealt with them on that basis.
3. The appellants submitted an Affordable Housing Viability Assessment at the Hearing. The document was submitted to the Council shortly before the Council determined the planning application but had not been published. The Hearing was adjourned to allow the Council to consult on and respond to the document. I have taken responses received into account in reaching my decision.
4. The appellants have referred to a Court of Appeal judgement¹ which considers the proper interpretation and application of paragraph 49 of the National Planning Policy Framework (the Framework). I sought the parties' views on this judgement and have taken responses into account in determining the appeal.

¹ Suffolk Coastal District Council and Hopkins Homes and Secretary of State for Communities and Local Government, Richborough Estates LLP and Cheshire East Borough Council and Secretary of State for Communities and Local Government [2015] EWHC 410 (Admin) 17 March 2016 [2016] EWCA Civ 168.

Application for costs

5. At the Hearing an application for partial costs was made by Mr and Mrs Barba against St Albans City and District Council. This application will be the subject of a separate Decision.

Main Issues

6. As the site lies within the Green Belt, the main issues in the appeal are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and development plan policy;
 - The effect of the development on the openness and purposes of the Green Belt;
 - Whether the proposal would make adequate provision for affordable housing;
 - Whether the proposal would make adequate provision for infrastructure; and
 - If the proposal would be inappropriate development, whether the harm to the Green Belt, 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 it.

Reasons

7. The appeal site is located to the east of residential properties on Oaklands Lane and is accessed via a driveway between Nos 58 and 60. To the north is the former BT Trial site, part of which has been developed for residential use, known as Pastures View. To the east are Ellenbrook Fields, with access along the eastern boundary of the site via public footpaths. To the south is the former Chester Nurseries site, which is being redeveloped for residential use and public open space.

Whether inappropriate development

8. Paragraph 89 of the National Planning Policy Framework (the Framework) states that the construction of new buildings in the Green Belt should be regarded as inappropriate, save for a small number of exceptions. These include the partial or complete redevelopment of previously developed sites, whether redundant or in continuing use. The definition of previously developed land excludes land that is or has been occupied by agricultural buildings.
9. Policy 1 of the St Albans District Local Plan Review 1994 (LP) sets out the Council's policy for development within the Green Belt, but this pre-dates the Framework, and therefore my approach to whether the development would be inappropriate development within the Green Belt is made having regard to the Framework.
10. The site comprises mostly single storey glasshouses used for growing cucumbers. Adjacent to the glasshouses is a building referred to as the pack house, where produce is prepared for packing and distribution. This includes other goods such as tomatoes, peppers and aubergines which are brought in to

the site for distribution. Olive oil is also purchased once a year for distribution. The appellant has confirmed within a statutory declaration that about 40% of the activity taking place within the pack house relates to goods purchased and brought onto the site. Boilers within the packhouse are used to heat the glasshouses and release carbon dioxide to the cucumbers necessary for cultivation, and are therefore integral to the horticulture operation. As such it seems to me that whilst the glasshouses are in agricultural use, the pack house itself has a mixed use of agriculture and storage and distribution.

11. Along the southern boundary of the site there are a number of chalet type buildings and a mobile home that are being used for residential purposes, and towards the south east corner of the site is a vehicle workshop and contractors' yard. The Council accepts that the vehicle repair workshop, groundwork contractor's yard and nine dwellings are previously developed.
12. However, these elements relate to only a small proportion of the site. The glasshouses are 16,895 sqm, and the pack house is 874 sqm. The vehicle workshop and contractors yard have a combined area of just over 800sqm. The area of the nine dwellings is not provided but from the existing site plan it is clear that the greater part of the site remains in agricultural use. Just because part of the site is previously developed land it does not follow that the whole site is previously developed. When looked at overall the appeal site cannot reasonably be described as previously developed given the extent of the horticultural buildings that are outside this definition. The extent of other activities present is not sufficiently great for the site to be regarded as in a mixed use.
13. I acknowledge that residential development has been permitted to the north of the appeal site at Pastures View, the former BT Trial site, and at the former Chester Nurseries, to the south. In the case of the BT Trial site, the Council considered that the development of part of the former industrial site which included buildings and telecommunications masts with dwellings constituted very special circumstances. In the Chester Nurseries appeal the Inspector found that the site had a sui generis use, based on approximately 30% of the turnover of the business deriving from the production and sale of hanging baskets on site. This is different to the appeal before me, where most of the site comprises a horticultural operation, with some other uses.
14. I therefore conclude that the site is not previously developed land, as set out in Annex 2 to the Framework. Consequently the last bullet point of paragraph 89 would not apply, and the proposal would be inappropriate development in the Green Belt. It would also be contrary to LP Policy 1.

Openness and purposes of the Green Belt

15. The fundamental aim of Green Belt policy, as set out in paragraph 79 of the Framework is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and permanence.
16. A substantial part of the site is currently covered with buildings. Whilst the application was submitted in outline and the site plan and street scene are illustrative in nature, and represent only one way in which the site might be developed, to achieve the required height and size for the proposed dwellings they would need to be of a certain size, and it is likely that the dwellings would be greater in height than the existing buildings. However, there would be likely

to be a reduction in the amount of floorspace compared with the existing situation, and the dwellings could be set further back from the eastern site boundary than the existing glasshouses. As a result I consider there would be no greater impact on openness than at present.

17. The proposal would extend beyond the housing now under construction at Chester Nursery to the south, but not beyond the existing built form on the appeal site. The proposal would include an element of public open space, and the existing mature landscaping along the northern and eastern boundaries would be retained. I accept that the development would have a domestic appearance, but it would be seen within the context of residential development to the north and south when viewed from the adjacent public open space. Consequently it would not encroach into the open countryside.
18. In addition, as St Albans and Hatfield are separated in this location by Ellenbrook Fields, coalescence between the two settlements would be avoided. Accordingly, there would be no harm in respect of the purposes of including land within the Green Belt.

Affordable Housing

19. The Council contends the proposal does not make adequate provision for affordable housing. The second reason for refusal referred to LP Policy 7A and LP Policy 8, but the Council accepted at the Hearing that LP Policy 7A does not apply to sites outside Towns and Specified Locations and Settlements.
20. LP Policy 8 supports proposals for affordable housing within the Green Belt where it is demonstrated that the need cannot be met in a non-Green Belt location. The development, by virtue of the site area being greater than 0.4 hectares, falls outside the remit of LP Policy 8.
21. The appellants supplied a Viability Assessment in support of the proposal which indicates that the scheme can only support 10% affordable housing, and a unilateral undertaking agreeing to provide this on site. The Council commissioned an independent appraisal of this document by BNP Paribas, which finds that the appeal proposal is capable of providing 10 affordable housing units equating to 35.7% of the total units.
22. I acknowledge the Framework at paragraph 50 requires local planning authorities to plan for affordable housing, taking into account the viability of sites. However, there is no requirement within the development plan as to how much affordable housing should be provided, and there is limited evidence before me as to the Council's approach in this matter. Whilst the Council referred to its Strategic Housing Market Assessment (SHMA) (2009), the document did not form part of the Council's case and no specific requirements for affordable housing arising from the SHMA have been identified.
23. I also note that the developer at the Chester Nurseries site offered 35% affordable housing, which the Council considered to be policy compliant. However, LP Policy 8 does not set a target for the proportion of affordable housing to be achieved on each site and pre-dates the Framework. A unilateral undertaking has been offered by the appellant and would make a contribution, albeit modest to affordable housing in the local authority area. I therefore conclude that the proposal would provide adequate provision for affordable housing.

Infrastructure

24. The Council requires contributions toward education, libraries and fire safety, in accordance with LP Policy 143B. Hertfordshire County Council's (HCC) *Planning Obligations guidance – Toolkit for Hertfordshire* (2008) provides the methodology for calculating such contributions, summarised in Table 2 of the document.
25. HCC has advised that there is a deficit of primary school places within the local area and the contribution would fund additional places at Oakwood Primary School. The library contribution would be used to reconfigure the children's area at St Albans Central library. The UU also provides for a fire hydrant (s) to ensure that all dwellings would be adequately served in the event of fire, and the Fire and Rescue service has confirmed hydrants would be required for the development.
26. The appellant has provided a signed and executed UU agreeing to provide the aforementioned contributions in line with the requirements of Table 2 of the Toolkit, and HCC has confirmed that the contributions would not lead to the pooling of five or more obligations and thus would be compliant with Regulation 123 of the Community Infrastructure Levy Regulations 2010.
27. The provision and maintenance of parkland planting within the appeal site is included in the UU, and this would be necessary to provide adequate soft landscaping to safeguard the character and appearance of the area.
28. The UU also includes contributions towards youth, nursery education, childcare and sustainable transport. However, I have no evidence before me relating either to the necessity for these services or their compliance with Regulation 123, and thus I am unable to take these into account.
29. I therefore find that the UU, with the exception of the contributions set out in paragraph 28, meets the tests in paragraph 204 of the Framework, and would accord with LP policy 143B.

Other Considerations

30. When considering any planning application, substantial weight must be given to any harm to the Green Belt, in accordance with paragraph 88 of the Framework. Other considerations weighing in favour of the development must clearly outweigh that harm.
31. It is not disputed that the Council is unable to demonstrate a five year supply of deliverable housing sites and at the time of the appeal² there was only 3.73 years supply. The proposal would deliver 28 dwellings, three of which would be affordable housing. I give considerable weight to this benefit.
32. It has also been put to me that the redevelopment of the appeal site would be beneficial to future residents of the Chester Nurseries site in removing the noise and fumes emitted by Radio Nursery near to the common site boundary. There may be measures that could be taken under other legislation to reduce any harmful effects in this respect. Nevertheless, if the appeal were allowed the source of pollution would be removed and thus I give some limited weight to this benefit.

² Source – Planning Committee report ref. 5/2015/0644/SSM

Conclusion

33. I have found that the effect on openness would be neutral, and that there would be no harm to the purposes of including land within the Green Belt, but the proposal would be inappropriate development in the Green Belt and I give substantial weight to this harm.
34. I have given considerable weight to the provision of new housing, including affordable housing, and limited weight to the benefit of the removal of the nursery business from the site. The contributions offered towards infrastructure would mitigate the impacts of development and thus would not be a benefit. Taken together, these other considerations do not clearly outweigh the harm that the proposal would cause. Consequently there are not the very special circumstances necessary to justify inappropriate development in the Green Belt.
35. Furthermore, as there are specific policies in Section 9 of the Framework that indicate that development should be restricted, this is not a proposal that should be permitted having regard to paragraph 14 of the Framework. I have also found that the proposal would be contrary to the development plan.
36. I therefore conclude that the appeal should be dismissed.

Claire Victory

INSPECTOR

APPEARANCES

For the Appellants:

Mr Derek Bromley Bidwells

Mr Elio Barba Appellant (6 April only)

Mr Douglas Raine (6 April only)

Mr Tony Woodfield (25 May only)

For the Council:

Mrs Sarah Ashton Deputy Planning Team Leader (East) St Albans City and District Council

Interested Persons:

Cllr Geoff Harrison St Albans City and District Council (6 April only)

Jeff Bates Resident (25 May only)

Documents submitted on 6 April 2016

- 1 Timeline Viability Assessment, submitted by the Appellants
- 2 Note on Court of Appeal Decision, submitted by the Appellants
- 3 Reserved Matters site layout Chester Nurseries ref. 5/15/1386, submitted by the Council
- 4 Reserved Matters elevations plot 16, submitted by the Appellants
- 5 Radio Nursery – live application site layout ref. 5/2015/3428, submitted by the Appellants
- 6 Legal comment on Green Belt case, submitted by Appellants
- 7 Affordable Housing Viability Assessment, submitted by Appellants

Documents submitted on 25 May 2016

- 1 Emails and letters in response to LPA comments on viability assessment, submitted by the Appellants
- 2 Appeal Decision, Former Holdsworth Showground, submitted by the Council
- 3 S106 Calculation, submitted by the Appellants
- 4 Closing submission, submitted by the Appellants
- 5 Application for costs, submitted by the Appellants