
Appeal Decision

Site visit made on 22 August 2016

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 11th October 2016

Appeal Ref: APP/J1915/W/16/3151677

**Former White Horse Farm, White Horse Lane, Burnham Green,
Hertfordshire AL6 0HA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Simon Warner, Heronslea Group against the decision of East Hertfordshire District Council.
 - The application Ref 3/15/1509/FUL, dated 17 July 2015, was refused by notice dated 12 January 2016.
 - The development proposed is demolition of commercial buildings and erection of four detached houses with car parking and amenity space.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of commercial buildings and the erection of four detached houses with car parking and amenity space at Former White Horse Farm, White Horse Lane, Burnham Green, Hertfordshire AL6 0HA in accordance with the terms of the application, Ref 3/15/1509/FUL, dated 17 July 2015, subject to the conditions set out in the Schedule to this decision.

Preliminary Matter

2. The proposal was amended following submission to the Council but prior to its determination. The changes, shown on amended plans, are relatively minor in nature and do not change the overall substance of the proposal. I am satisfied that no party would be prejudiced by my consideration of the amended scheme. I have, therefore, determined the appeal on this basis.

Main Issues

3. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - The effect of the proposal on the character and appearance of the area.
 - Whether the proposal should make a contribution to the provision of affordable housing and if so, whether a satisfactory contribution is proposed.
 - Whether the proposal would make a satisfactory contribution towards meeting housing needs in the area.
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- Whether the proposal would be a suitable location for housing having regard to the principles of sustainable development.

Reasons

Whether the proposal would be inappropriate development?

4. The appeal site is located in the Metropolitan Green Belt. Policy GBC1 of the East Herts Local Plan Second Review 2007 (LP) states that permission will not be given for inappropriate development unless very special circumstances can be demonstrated. The Policy makes clear, reflecting Paragraph 89 of the Framework, that the construction of new buildings within the Green Belt will be inappropriate unless it is for one of several exceptions.
5. Policy OSV3 of the LP states that in Category 3 villages in the Green Belt (such as Burnham Green) development will not be permitted unless it is development which is not inappropriate or for rural exceptions affordable housing. The proposal would not accord with any of the exceptions in Policy GBC1 or the criteria in Policy OSV3 and would, therefore, conflict with those policies.
6. However, in this respect Policies GBC1 and OSV3 are inconsistent with Paragraph 89 of the Framework which sets out one of the specified exceptions as limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt. Consequently, in accordance with Paragraph 215 of the Framework, this limits the weight that can be afforded to Policies GBC1 and OSV3.
7. The main parties agree that, having regard to the definition contained within Annexe 2 of the Framework, the appeal site would constitute previously developed, 'brownfield land'. Neighbouring residents suggest that part of the site to the rear of 10 Whitehorse Lane would not constitute previously developed land because it does not form the curtilage of the existing buildings. However, it is indicated that the land is accessible from 10 Whitehorse Lane and that residents have had the ability to use the land in the past. Moreover, the evidence provided suggests that the land could reasonably be considered as residential curtilage, regardless of its ownership. As a result, on the evidence before me, I am satisfied that, when considered as a whole, the appeal site would constitute previously developed land.
8. The appeal site contains several single storey buildings which, having previously been in commercial use, are now vacant. The site also contains a significant extent of hard standing. There is considerable disparity in the figures put forward by the parties regarding the existing and proposed quantity of floor space. Nevertheless, it is clear from the evidence that the proposal would result in a significant reduction in footprint from the existing buildings of somewhere between 53% and 74%. Moreover, the appellant's figures indicate that there would be an 85% reduction in the amount of hard standing and a 47% reduction the volume of buildings.
9. The proposed dwellings would be two-storey, with overall heights of around 9.2m. I note that this would be higher than the existing buildings on the site. I also note the Council's view that each dwelling would have an average footprint and scale greater than that commonly found in the area. However, it

was clear from my site visit that the scale of the properties would not be markedly dissimilar to properties nearby, including those on Burnham Close. Furthermore, there would be increased separation distances with surrounding dwellings and an enhancement in the amount of landscaping on the site. There would, therefore, be a greater sense of space than exists currently.

10. As a result, I am satisfied that, in the circumstances of this case, the proposal would not result in a greater impact on the openness of the Green Belt than the existing development. It follows, therefore, that I consider the proposal would not have a harmful effect on the openness of the Green Belt.
11. I conclude, therefore, that having regard to Paragraph 89 of the Framework, the proposal would not be inappropriate development in the Green Belt. Having regard to the advice set out in the Framework, it is not necessary to consider whether very special circumstances exist in this instance.

Character and Appearance

12. Part of the appeal site lies between residential properties on White Horse Lane which follow a distinctly linear pattern and front onto the village green. To the south of the site, the pattern is more loosely knit with cottages and commercial units. To the east, the pattern is again less rigid than those properties on White Horse Lane, with the properties of Burnham Close characterised by large detached houses set on generous plots.
13. The surrounding properties are predominately two-storey with a mix of terraced, semi-detached and detached properties of varying scale. Nearby properties are generally traditional in appearance, though there are more modern developments located nearby at Burnham Close. Properties in the area vary in style, though there are some distinctive architectural elements found in key buildings throughout the area, such as hipped roofs and gable features.
14. Plot 1 would sit in line with the properties on White Horse Lane with a similar height and the Council has raised no concerns in that regard. However, the Council considers the detached units to the rear would result in a compressed layout which would appear cramped and would relate poorly to the pattern of development of the area. Nonetheless, whilst the detached properties on plots 3 and 4 would have a smaller gap between them than the properties of Burnham Close, the layout of the scheme overall would contain a generous amount of space between the buildings.
15. Each property would have a substantial garden area and, whilst I recognise some existing trees would be lost, there would be additional landscaping throughout the site. Moreover, separation distances to neighbouring properties would be ample and the development would share several characteristics with the more loosely knit pattern of the existing development surrounding the site, particularly at Tebbut Court and Burnham Close. As a result, the proposal would not appear unduly cramped or incongruous nor would it relate poorly to the established pattern of development.
16. Whilst the properties on Plots 2 - 4 would have a height of around 9.2m, they would, in my view, be distinctly two-storey in appearance, reflecting the larger detached properties located on Burnham Close and the higher properties of 2 and 8 White Horse Lane. Furthermore, the properties would draw on several architectural elements of surrounding buildings. Notably, Plot 2 would have a

high roof with pitched gable dormer windows which would draw upon the characteristics of 4 and 8 White Horse Lane. The properties on Plots 3 and 4 would reflect the central, hipped gable feature found at the White Horse Public House. Consequently, the proposal would relate well to the surrounding area and would, in my view, respond well to local distinctiveness.

17. I conclude, therefore, that the proposal would not have a harmful effect on the character and appearance of the area. The proposal would subsequently comply with policy ENV1 of the LP which states that all development proposals are expected to be of a high standard of design.

Affordable Housing

18. Policy HSG3 of the LP sets out the Council's affordable housing requirements for residential development. There is no specific policy provision for affordable housing provision on developments in Category 3 villages since Policy OSV3 does not allow for any housing in such locations, except for 100% affordable rural exception schemes which is not proposed here. Although there is no specific policy provision for affordable housing provision on developments in Category 3 villages, the Council considers that having regard to Policies OSV3 and HSG3, and the provisions of the Framework, that the proposal should make some provision towards affordable housing. No such contribution is proposed.
19. On 11 May 2016, the Court of Appeal upheld an appeal¹ against a High Court judgement of 31 July 2015 relating to the Written Ministerial Statement (WMS) of 28 November 2014 and subsequent revisions to the Planning Practice Guidance (PPG) to remove paragraphs 12-23². As a result, Government policy relating to affordable housing and tariff style contributions as expressed in the WMS and PPG is an important consideration. The PPG³ now advises that contributions should not be sought from developments of 10-units or less. This clearly establishes that Government policy does not require contributions to be sought in cases such as this.
20. Although no affordable housing contribution is proposed, the proposal would fall below the threshold set out in the PPG and WMS indicating that affordable housing and tariff-style planning obligations should not be sought. This is a material consideration which, in my view, would significantly outweigh any conflict with Policies OSV3 and HSG3.
21. I conclude, therefore, that the proposal should not make a contribution to the provision of affordable housing and that such a contribution would not be necessary, directly related, and fairly and reasonable related in scale and kind to the proposed development, in accordance with CIL Regulation 122, and paragraph 204 of the Framework.

Housing Mix

22. The Council objects to the proposal on the basis that the proposed dwellings would not address an identified rural housing need. It is indicated that there is

¹ *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council* [2016] EWCA Civ441

² Planning Practice Guidance - 23b-012-20150326 – 23b-023-20150326

³ Planning Practice Guidance - 23b-031-20160519

a significant need for 2 bedroom dwellings in the area, although the Council has not provided any substantive evidence to support its position.

23. Paragraph 50 of the Framework seeks to deliver a wide choice of quality homes. The appellant points to the Council's Strategic Housing Market Assessment 2015 (SHMA) which indicates that the greatest need is for 3 bedroom homes. It is clear from the excerpts of the SHMA presented by the appellant that there is a need for housing across all dwelling sizes and tenures. The proposal would provide one 3 bedroom dwelling and three 5 bedroom dwellings which would also have the flexibility to be used as a 4 bedroom dwellings. Moreover, the Council accepts that it cannot demonstrate a 5 year supply of housing and it is clear that there is a significant shortfall in housing delivery in the area to which the proposal would contribute. As a result, I am satisfied that the proposal would provide an appropriate mix of housing and contribute towards boosting the supply of housing.
24. I conclude, therefore, that the proposal would make a satisfactory contribution towards meeting the housing needs of the area. The proposal would, therefore, contribute towards delivering a wide choice of quality homes in line with Paragraph 50 of the Framework.

Sustainable development

25. Paragraph 7 of the Framework sets out that there are three dimensions to sustainable development – economic, social and environmental. The Council contends that the proposal would fail to meet the social dimension and would not, therefore, constitute sustainable development for which the Framework states there is a presumption in favour of.
26. Paragraph 8 of the Framework, however, sets out that these roles should not be undertaken in isolation because they are mutually dependent. Therefore, in judging whether the proposal would achieve sustainable development, I must have consideration to the proposal against the policies in the Framework as a whole.
27. In terms of the social role, I have found that the proposal would make an important contribution towards meeting housing need in the area. Furthermore, the parties agree that the Council cannot demonstrate a 5 year supply of housing land. The proposal would therefore provide a small, but nevertheless important, contribution towards boosting the supply of housing, in line with Paragraph 47 of the Framework. The proposal would not make any contribution towards affordable housing, however, I have found that it should not make such a contribution. That is therefore a neutral factor in the balance.
28. I have found that the proposal would not constitute inappropriate development in the Green Belt. Moreover, the proposal would not have a harmful effect on the character and appearance of the area. Indeed, given the poorly maintained condition of the existing buildings on the site, there would be a small environmental gain from the proposal.
29. Furthermore, the proposal would make a small contribution towards supporting local services and facilities through increased spending from future residents. There would also be some economic benefits as the proposal would support employment during construction. As a result, I am satisfied that the proposal would fulfil the social, environmental and economic roles of sustainability.

30. I conclude, therefore, that the proposal would be a suitable location for housing having regard to the principles of sustainable development. The proposal would, accordingly, comply with the policies of the Framework when taken as a whole.

Other Matters

31. Although not a reason for refusal, the Council's officer report sets out concerns in respect of the loss of an existing employment site. Policy EDE2 of the LP states that development which results in the loss of an existing employment site will only be permitted where: the retention of the site or premises for employment use has been explored fully without success; the proposed use does not have a significant adverse impact on the amenity of the adjacent area or nearby occupiers; and access, parking and servicing arrangements are satisfactory.
32. The appellant indicates that the site has been vacant since 2013 and that it has been marketed since that date without interest for use as storage and haulage or as a development opportunity. Whilst I do not have any detailed evidence of the marketing undertaken, in the absence of any contradictory evidence from the Council, I see no reason to conclude that the marketing of the site carried out since 2013 has not been sufficient. To that end, I am satisfied that there is no demand for the site for employment purposes and that the retention of the site has been explored without success. The proposal would therefore accord with Policy EDE2 of the LP.
33. I note the concerns of local residents regarding the potential effect of the proposed house on Plot 2 upon the living conditions of the occupiers 8 and 10 Whitehorse Lane. However, I am satisfied that, given the intervening distances to those properties and their gardens and the potential for additional landscaping which could be secured by condition, that the proposal would not prejudice the living conditions of those residents with regard to privacy.
34. The appeal proposal would provide driveway and garage parking for each of the properties. Moreover, six visitor parking spaces would be provided within the site. The Council's officer report indicates that the parking provision would be sub-standard and would result in cars being displaced onto local roads. However, I have no substantive evidence to demonstrate that the proposed parking arrangements would be inadequate and lead to adverse effects on highway safety. Indeed, I note that the County Highways Authority raised no objections to the revised plans which included two additional visitor parking spaces. On the evidence before me, I am satisfied the proposed parking arrangements would not have a harmful effect on highway safety.

Conditions

35. In addition to the standard time limit condition, I consider a condition requiring compliance with the approved plans necessary to provide certainty. A condition requiring details of all external materials to be agreed is necessary to safeguard the character and appearance of the area. For the same reason, and to ensure the living conditions of neighbouring residents are protected, a condition requiring details of all boundary treatments to be agreed is necessary, as is a condition requiring details of facilities for the storage of refuse on the site.

36. There is a degree of variation in the ground levels on the site and surrounding land. To that end I consider it necessary to impose a condition requiring details of the existing and finished ground levels to be submitted and agreed in the interests of the living conditions of neighbouring residents.
37. As the site has a history of general industrial use, there is the risk of potential ground contamination. As a result, conditions relating to contaminated land are necessary. I also agree with the Council that, in order to prevent flood risk from surface runoff, details of the proposed surface water drainage works should be agreed.
38. Conditions have been suggested by the Council in respect of road surfacing, the provision of parking spaces and construction traffic, which I agree are necessary in order to prevent adverse effects on highway safety. I consider a condition preventing the loss of the garages as car parking spaces is also necessary in the interests of highway safety.
39. A condition requiring all hard and soft landscaping works to be agreed is necessary in the interests of character and appearance and the living conditions of neighbouring residents, as is a condition requiring the protection of existing trees and vegetation on the site. Finally, I agree that a condition restricting the timing of all works is necessary in the interests of the living conditions of neighbouring occupiers.
40. Paragraph 204 of the Framework is clear that conditions should not be used to restrict permitted development rights unless there is clear justification for doing so. In the absence of any detailed justification from the Council, I do not consider a condition to prevent any enlargement, improvement or other alteration of the proposed dwellings is necessary.
41. The Council has also suggested a condition to require measures for the reuse of existing materials on the site within the proposed development, along with other measures to minimise waste from the scheme. However, I have no substantive evidence to suggest such a condition would be necessary or reasonable in this instance.

Conclusion

42. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be allowed.

Jason Whitfield

INSPECTOR

SCHEDULE

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: HL-001, HL-002, HL-003, HL-009, HL-010, HL-004 Rev A, HL-005 Rev A, HL-006 Rev A, HL-007 Rev A and HL-008 Rev A.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the agreed details.
- 4) No development shall take place until there has been submitted to and agreed in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the buildings are occupied. Development shall be carried out in accordance with the agreed details.
- 5) No development shall take place until detailed plans showing the existing and proposed ground levels of the site relative to adjoining land, together with the slab levels and ridge heights of the dwellings hereby permitted, have been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the agreed details.
- 6) No development shall take place until details of facilities to be provided for the storage and removal of refuse from the site have been submitted to and agreed in writing by the local planning authority. The facilities shall be provided before the buildings are occupied. Development shall be carried out in accordance with the agreed details.
- 7) No development shall take place until details of construction vehicle movements and construction access arrangements have been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the agreed details.
- 8) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - a survey of the extent, scale and nature of contamination;
 - the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; ground waters and surface

waters; ecological systems; and archaeological sites and ancient monuments.

- 9) No development shall take place where land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out (and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority) before the development is occupied.
- 10) Any contamination that is found during the course of construction of the development permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 11) No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - include a timetable for its implementation; and,
 - provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 12) No building hereby permitted shall be occupied until details of the construction and surfacing of the road and footpaths serving the development have been submitted to and agreed in writing by the local planning authority. No dwelling hereby permitted shall be occupied until

the road and footpaths have been constructed in accordance with the agreed details.

- 13) No building hereby permitted shall be occupied until spaces have been laid out within the site, in accordance with drawing ref: HL-004a for cars to be parked and those spaces shall be thereafter retained and kept available at all times for use in connection with the development hereby permitted.
- 14) No building hereby permitted shall be occupied until details of both hard and soft landscape works have been submitted to and agreed in writing by the local planning authority. These details shall include: hard surfacing materials; planting plans; written specifications; schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate; implementation timetables. The landscaping shall be carried out in accordance with the agreed details.
- 15) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 16) No development shall take place until all trees, shrubs, natural and historic features not scheduled for removal are fenced along a line to be first agreed in writing by the local planning authority with minimum 2.3m high metal fencing securely mounted to the ground in accordance with British Standard BS5837:2012 Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced). Such fencing shall be maintained during the duration of works on the site. No unauthorised access or placement of goods, fuels or chemicals, soil or other materials shall take place inside the fenced area. If any retained tree is cut down, uprooted or destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted by not later than the end of the first available planting season.
- 17) Demolition, site preparation or construction works shall take place only between 07.30 and 18.30 on Mondays to Fridays, 07.30 to 13.00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 18) The garages hereby permitted shall be kept available at all times for the parking of motor vehicles by the occupants of the dwellings and their visitors and for no other purpose.

-----END OF SCHEDULE-----