

Appeal Decision

Site visit made on 13 December 2016

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 29th December 2016

Appeal Ref: APP/Y3615/W/16/3158341

Nutberry Fruit Farm, Portsmouth Road, Ripley, Surrey GU23 6BA

- 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 Emmanuel Coccolios against the decision of Guildford Borough Council.
 - The application Ref 16/P/00724, dated 7 April 2016, was refused by notice dated 27 May 2016.
 - The development proposed is described in the following terms: 'Proposed brownfield residential redevelopment – Erection of 2 new build dwellings; revised application further to 15/P/02012, in the alternative to permission granted under 15/W/00080 relating to proposed change of use from agricultural building to two dwelling houses with associated external alterations and including as very special circumstances the cessation of car boot sales at the site'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development on the Council decision notice differs from that on the application form. In accordance with normal practice I have used the latter in my decision.
3. The Council's second reason for refusal was based on its concerns about the effects of the proposal on the ecological value of the Thames Basin Heaths Special Protection Area (TBHSPA). After the decision, the Appellant submitted a signed planning obligation relating to this matter which has also been executed by the Council. As a result, the Council has confirmed that it no longer wishes to contest reason for refusal number 2. Whilst this matter is no longer in contention between the parties I comment further on the obligation later in my decision.

Main Issues

4. The main issues are:
 - (a) Whether or not the proposal would be inappropriate development in the Green Belt;
 - (b) The effect of the proposal on the openness of the Green Belt; and
 - (c) If the proposal would be inappropriate, whether the 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 necessary to justify the development.

Reasons

Inappropriate development

5. Paragraph 89 of the National Planning Policy Framework (the 'Framework') establishes that the construction of new buildings in the Green Belt is inappropriate unless they would fall within one of a number of specified exceptions.
6. The Appellant has argued that the proposal would comprise the redevelopment of previously developed land. Under bullet point 6 of paragraph 89, new buildings which would cause the limited infilling or redevelopment of a previously developed site are, in some circumstances, not inappropriate. However, the definition of 'previously developed land' (PDL) in Annex 2 of the Framework excludes land that is or has been occupied by agricultural buildings.
7. The 2 proposed new dwellings would replace a large building, described by the Appellant as an 'agricultural building'¹, and a water tank. Whilst prior approval 15/W/00080 is in place for conversion of the building to form two dwellings, this had yet to be implemented at the time of my site visit. The existence of this prior approval does not mean that the building is not 'agricultural' in the context of Annex 2.
8. The Appellant has claimed that the site has been used to hold car boot sales on up to 28 days each year for over 10 years under permitted development use rights. However, this would not mean that the building on the site cannot now be solely and lawfully used for agriculture. There is also no substantive evidence that the water tank is not capable of such use.
9. Having regard to these points I consider that the existing structures within the site are 'agricultural buildings' in the context of Annex 2, and that the site as a whole does not comprise PDL. This means that, irrespective of my findings concerning openness which I set out later in my decision, the proposal does not fall into the exception to 'inappropriate development' set by bullet point 6 of paragraph 89.
10. Under bullet point 4 of paragraph 89, a new building is not inappropriate if it would replace, be in the same use as and not be materially larger than an existing building. As the 2 existing structures to be replaced do not comprise dwellings, and are therefore not in the same use as the proposed buildings, bullet point 4 also does not apply in this case.
11. The proposed development would not be for a use which is within bullet points 1 or 2 of paragraph 89. As it would not comprise the extension or alteration of an existing building or limited infilling in a village, or be limited to providing affordable housing it would also not fall within bullet points 3 or 5.
12. The proposal would also not fall into any of the exceptions to inappropriate development listed in Saved Policy RE2 of the Guildford Borough Local Plan (GBLP) 2003 or relate to one of the major existing developed sites in the Green Belt identified in the GBLP. Whilst Policy RE2 makes no reference to the

¹ Question 3 of the application form

redevelopment of PDL, and therefore fails to accord with the Framework in this respect, this is of little significance in the context of this appeal as the site is not PDL as defined in the Framework.

13. As it would not fall into any of the exceptions to inappropriate development set out in paragraph 89 of the Framework, or in the GBLP, the proposal would constitute inappropriate development in the Green Belt. Paragraph 87 of the Framework states that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

Openness

14. The Appellant's Design and Access Statement estimates that, whilst the existing agricultural building to be demolished has a volume of about 1,200 cubic metres, the total combined volume of the 2 proposed dwellings would be about 1,175 cubic metres. I have no reason to doubt the accuracy of these figures, which also appear to exclude the water tank which would be removed. The combined volume of the 2 proposed dwellings would therefore be less than that of the two existing structures which would be removed.
15. The proposed dwellings would also have a similar height to the existing building and their footprints would cover a similar combined area to those of the existing structures which would be removed. Some existing trees which provide a degree of visual enclosure along the north eastern and north western sides of the site could also be retained.
16. Set against these points, however, the curtilages of the proposed dwellings would encroach onto the areas around the footprints of the existing structures. The appeal proposal would need to accommodate car parking, which would cause some loss of openness even if no garaging is provided. The gardens would also need to be at least partially enclosed if they are to provide satisfactory levels of privacy and security for future occupiers.
17. I conclude that the proposed development would in overall terms have a neutral effect on the openness of the Green Belt. This does not detract from the harm that I have identified by reason of inappropriateness.

Other considerations

18. The proposal would, by creating 2 new dwellings, help to deliver the Government's objective of significantly boosting the supply of housing set out in paragraph 47 of the Framework and in other documents. Furthermore, it would do so in a district where the Council has accepted that it cannot demonstrate a 5 year supply of deliverable sites for housing development. Whilst the proposal would have a modest impact on the overall housing land supply this would be an important benefit. I have therefore given it fairly substantial weight in the overall planning balance.
19. The lack of a 5 year land supply would indicate, by virtue of paragraph 49 of the Framework, that relevant policies for the supply of housing in the GBLP are out of date. However, this point must be considered in the light of the final section of paragraph 14 of the Framework. This indicates that where the development plan is out of date, permission should be granted *unless* (my emphasis) specific policies in the Framework, which include those related to Green Belt, indicate that development should be restricted.

20. My attention has been drawn to the contribution that the proposal could make to the economic growth objectives of the Framework. However, any benefit that would arise from the creation of construction jobs and spending for example on construction materials would only apply during the period that the houses would be built. Whilst the proposal would lead to a long term increase in spending power, which could benefit local shops and other services, this increase would be likely to be of very limited magnitude compared to the overall spending patterns in the area. I consider that the economic benefits of the appeal proposal, whilst material, would be of a modest scale.
21. The Appellant has stated that if the appeal were successful he would accept a restriction which would prevent the site from being used for car boot sales. However, as this use only appears to have been on an occasional basis it would not have caused long term harm to the Green Belt, and there is no substantive evidence to indicate that it has caused harm in relation to any other matter. As the relevant permitted development rights do not apply to a building or land within the curtilage of a building they are also unlikely to currently apply in any event to the entire site and would not apply to many sites used for residential purposes². I have given very limited weight to this matter as an argument for allowing the appeal proposal.
22. Occupiers of the proposed dwellings would be able to walk or cycle to services in High Street, Ripley, which is only a few hundred metres away. However, the site is outside the existing urban area and the evidence does not demonstrate that it is particularly accessible to jobs and services by means of transport other than the private car when compared with other potential housing sites in the area. This factor does not weigh heavily in support of the proposal.
23. I note that the existing large building which would be demolished as part of the appeal proposal is not listed or in a Conservation Area. However, whilst this building has a rather 'industrial' appearance it is typical of many agricultural buildings which are found within a rural landscape. Similar considerations apply to the tracks and hard standings which are also present on the site.
24. I consider that the proposed dwellings would have an acceptable design and agree with the Appellant that they could be built using high quality materials and that additional landscaping could be provided. However I consider that the proposals as a whole would have a neutral effect on the rural character and appearance of the area.
25. I note that the proposed dwellings would be orientated so as to facilitate the effective use of solar panels, and could be designed to incorporate sustainable design features such as water harvesting, and be energy efficient. However, whilst these points would mitigate the environmental effects of the dwellings, there is no substantive evidence to show that the scheme would bring net benefits in these respects.
26. I also agree that the dwellings would be acceptable in other respects, for example in relation to the living conditions and security of future occupiers and highway safety. However, these points constitute a lack of harm in relation to these matters rather than substantive benefits that would arise from the proposal. Whilst the Appellant proposes to install bat bricks and tiles and other

² See paragraph B.1(b) of Part 4, Class B of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015

- measures to encourage wildlife, it has not been shown that there would be a substantial net improvement in biodiversity interests at the site.
27. The Appellant has placed a substantial amount of emphasis on the existence of prior approval 15/W/00080, under which the existing barn can be converted to form 2 dwellings (the 'fall-back scheme'). This approval is not time expired and I have no reason to doubt that there is a reasonable prospect of it being implemented if the appeal is dismissed. It therefore forms a realistic 'fall-back' position which is clearly material to my decision.
28. Like the appeal proposal, the fall-back scheme would enable 2 new dwellings to be created. Whilst the nature and configuration of the accommodation would be different in the two schemes, there is no convincing evidence to show that either would be more beneficial than the other in terms of its contribution to overall housing delivery or to meeting housing needs in the area. The two schemes would also have similar economic benefits.
29. Unlike the appeal proposal, the fall-back scheme would re-use the existing building which as I have already stated currently has a rather 'industrial' appearance. However, the fall-back scheme would have an acceptable design and like the appeal proposal would not have a harmful effect on the rural character or appearance of the site or the surrounding area.
30. The appeal proposal would also not lead to any substantial benefit, or to the avoidance of substantial harm, in relation to any other matter when compared with the fall-back scheme. Furthermore, unlike the fall-back scheme, the appeal proposal would constitute inappropriate, and therefore by definition harmful, development in the Green Belt.
31. For these reasons the existence of the fall-back scheme does not weigh substantially in favour of allowing the appeal proposal.
32. I have noted the other appeal decisions and legal cases referred to by the Appellant. However, the circumstances related to those cases do not replicate those concerning the current appeal. I have also considered the appeal as I must on its own merits. My decision takes full account of the primacy which is given to the development plan under Section 38(6) of the Planning and Compulsory Purchase Act 2004.

Planning Obligation

33. The planning obligation which has been submitted in response to the Council's second reason for refusal requires the owner to pay contributions to the Council towards the cost of upgrading, managing and monitoring Suitable Accessible Natural Greenspace (SANGS) in accordance with the Thames Basin Heaths Special Protection Area (TBHSPA) Avoidance Strategy. These include a 'SANGS contribution' of £9,903.78 and an 'Access Management and Monitoring Contribution' of 1,967.12.
34. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) (the 'CIL Regulations') states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

35. There is no dispute that the site is within 400 metres to 5 kilometres of the TBHSPA. Given this proximity, in the absence of satisfactory mitigation measures the proposed dwellings would lead to risk of harm to the TBHSPA through increased dog walking, general recreational use, damage to the habitat and disturbance to the protected species within it. Such mitigation can be provided by a suitably targeted financial contribution such as that proposed.
36. Whilst I am satisfied on this basis that the obligation meets the first and second parts of the Regulation 122(2) tests, there is no substantive evidence before me concerning how the sums included in the obligation have been calculated. As a result, it has not been demonstrated that the obligation satisfies the test of being fairly and reasonably related in scale and kind to the development. This would however only be determinative in the appeal if the overall planning balance were to be otherwise positive.
37. Regulation 123(3) of the CIL Regulations sets limitations on the extent to which planning obligations can be pooled to provide for the funding or provision of a type of infrastructure. However, the Council has indicated that the contribution would not be used to fund or provide 'infrastructure' as defined in the relevant legislation.

The planning balance and conclusions

38. I have found that the proposed development would constitute inappropriate development in the Green Belt. Inappropriate development is by definition harmful. Paragraph 88 of the Framework requires that substantial weight be attributed to the harm to the Green Belt.
39. Set against this harm, the proposal would deliver 2 new dwellings in an area with a shortfall in supply of deliverable housing land. However, whilst this carries fairly substantial weight in its support, other benefits that would be delivered are of limited collective weight. The existence of the fall-back scheme does not, for reasons which I have identified, weigh substantially in favour of allowing the proposed development.
40. I have carefully weighed all the points which have been made for and against the proposal. However, I do not consider that the harm that would be caused to the Green Belt would be clearly outweighed by other considerations as required by paragraph 88 of the Framework. The granting of permission would also conflict with the provisions of Saved Policy RE2 of the GBLP.
41. Due to the harm that it would cause to the Green Belt the proposal would also not constitute sustainable development as defined in paragraph 6 of the Framework. The last indent in paragraph 14 of the Framework indicates that in these circumstances development should be restricted.
42. For these reasons, I dismiss the appeal.

Jonathan Clarke

INSPECTOR