
Appeal Decision

Site visit made on 16 May 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 5th June 2017

Appeal Ref: APP/K0425/W/17/3167425

Land to the rear of 22 Chapel Road, Flaxwell Heath, Bucks.

- 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 E Hancocks against the decision of Wycombe District Council.
 - The application Ref 16/06063/OUT, dated 16 April 2016, was refused by notice dated 22 July 2016.
 - The development proposed is to relinquish all the commercial uses on the site and redevelop the site for residential purposes.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application has been expressed in outline with all matters other than access reserved for future consideration. I have considered the appeal on this basis.

Main Issues

3. The parties agree that the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the 'Framework').
 4. Consequently, the main issues in this appeal are:
 - a) whether there would be any further harm to the Green Belt, particularly in terms of openness and purposes of the Green Belt;
 - b) the effects of the development on the character and appearance of the Chilterns Area of Outstanding Natural Beauty;
 - c) whether the development would represent an efficient use of land;
 - d) whether the proposed development should provide affordable housing;;
 - e) the effects of the development on the availability of employment land in the District, and;
 - f) whether the harm to the Green Belt is clearly outweighed by other considerations so as to amount to very special circumstances necessary to justify inappropriate development in the Green Belt.
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Reasons

Background

5. The appeal site is located within the designated Metropolitan Green Belt (Green Belt) and Chilterns Area of Outstanding Natural Beauty (AONB). It is in a rural area that comprises a number of commercial buildings located in the northern section of the site together with relatively substantial sized trees that are subject to a Tree Preservation Order (TPO). There is a Certificate of Lawful Use in place for employment Class B2 and B8 uses¹ and also as private amenity use (D4) on the land.
6. The appeal site is set in a relatively flat area of land beyond which to the north-west rises in the form of a gently rolling landscape that is interspersed with densely wooded areas that characterise the AONB. This has the highest status of protection in relation to landscape and scenic beauty.
7. The appellant maintains that the floorspace used for commercial purposes amounts to some 900m². The site is located to the rear of the appellant's house and outside the reasonable settlement limits of Flaxwell Heath and considered by the Council as being in the open countryside. Access is gained via a housing estate. Immediately to the south are pockets of land used as allotments and urban fringe recreation including the keeping of horses beyond which is a temporary building used as the local scouts headquarters.

Issue a): Green Belt – harm

8. The Framework indicates at paragraph 79 the great importance attached by Government to the Green Belt, the fundamental aim of which is to prevent urban sprawl by keeping land permanently open. Policy CS9 of the Wycombe Development Framework Core Strategy (the Core Strategy) July 2008 follows the same path and is broadly consistent with guidance found in the Framework in particular paragraph 80. Policy GB2 of the Wycombe District Local Plan to 2011 (WDLP) also predates the Framework but does not follow the guidance on the exceptions to inappropriate development as set out in paragraph 89 of the Framework. In this regard there is a degree of inconsistency between the development plan and the Framework.
9. As I have indicated, there is no dispute between the parties that the site is within the Green Belt and would constitute inappropriate development. I agree with that position. The Framework makes it clear that inappropriate development in the Green Belt is by definition harmful to it and should not be permitted except in exceptional circumstances.
10. The nub of the appellant's arguments is that a large proportion of the site is previously developed land, including roads, hardstandings and buildings which have been confirmed through the lawful development certificate process and therefore the degree of harm by reason of inappropriateness is limited. Moreover, the land is contained by easily definable boundaries and essentially an adjunct to the settlement. As the appeal proposal is expressed in outline, the applicant contends that the built form could be restricted to the area presently containing buildings. According to the appellant's figures, this would actually result in a reduction in the overall B2 and B8 floorspace that currently amount to approximately 900 sqm.

¹ The Town and Country Planning (Use Classes) Order 1987

11. The concept of openness has both a spatial aspect as well as a visual aspect and these aspects are distinguishable from each other. I will deal separately with the visual impact arising from the development in the next section of this decision.
12. Dealing with the spatial aspect, the concept of openness in Green Belt terms stems mainly from the lack of built development, regardless of its visibility. The appellant appears to be willing to restrict development to the area of the buildings by way of condition. The Council maintains that once the site is deemed to be inappropriate, it cannot be then made *not inappropriate* through the carving up of slices of the site. The appellant does not contest this assertion however but rather, makes the case that the harm caused to the openness of the appeal site using Green Belt parlance, does not extend to the entire site.
13. Whilst I am satisfied that a development could take place within the defined area of the buildings and that there would be the strong possibility that such development would not be significantly greater than those buildings presently on the site in terms of height, volume and footprint, there is no evidence before me that indicates that this would be achievable. Further, and in any event, the red line envelopes the entire site. Thus, the proposed access and the inevitable upgrade of the access track together with the domestic paraphernalia that would inevitably follow from residential development as well as the comings and goings associated with residential living would increase the spread of activity that would also have a greater impact on the spatial qualities associated with the openness of the Green Belt.
14. I consider that development would detract from the openness of the Green Belt, adding to the harm due to inappropriateness.
15. I turn now to the five purposes of the Green Belt set out in paragraph 80 of the National Planning Policy Framework (the Framework). These include amongst other things, the checking of unrestricted sprawl of large built-up areas, preventing neighbouring towns merging with one another and assisting in safeguarding the countryside from encroachment.
16. The proposal would lead to the consolidation of the gap between Flaxwell Heath with Marlow and High Wycombe thus diminishing the separation between them and adding to the urban sprawl in the area. It would thus run counter to both these purposes.
17. Since part of the site is previously developed land and the appellant appears willing to restrict development to this particular part of the site, I consider the redevelopment as proposed for this part of the site would not materially prejudice the safeguarding of the countryside. Indeed, to the limited extent that it might reduce the need for development elsewhere in the countryside, it could assist in meeting the third purpose.
18. The site is not in a location where development here would lead to a situation that would prejudice the fourth purpose of preserving the setting and special character of towns.
19. Reuse of previously developed land is encouraged in the Framework (paragraph 17 core principle 8), but I cannot accept that residential development even on part of the site containing buildings would meet the fifth purpose in the

assisting of urban regeneration by encouraging the recycling of derelict and other urban land. The site although underused did not appear to be derelict and further, it could not be regarded as urban land. There may be relatively intensive development to the south and east, but this site is situated within the rural area.

20. Consequently, whilst the site is not undeveloped countryside and contains buildings of relatively sizable proportions, I find that the proposal would erode the wider openness of the Green belt and that this would be at odds with the characteristics of openness and permanence. In addition it would conflict with the defined purposes of the Green belt as defined in paragraph 80 of the Framework as set out above.

Character and Appearance – AONB

21. The appeal site is well screened and a substantial number of mature trees subject of a TPO provide effective screening of the existing buildings and other hardsurfacing within the site. These buildings are furthest from the residential area whilst beyond the site to the north-east is open countryside. Immediately to the east is a patchwork of rural-urban fringe type uses such as those described above.
22. The appeal particulars are accompanied by a layout drawing, which according to the appellant, is for illustrative purposes only. Given this, I am satisfied that an acceptable form of development could be achieved through careful negotiation at the Reserved Matters stage, particularly if the extent of development is restricted to the area of the existing buildings.
23. In the event that were I to allow this appeal subject to the kind of condition suggested by the appellant, any new dwellings would not be significantly more conspicuous within the streetscene than the existing level of development. The development would therefore be unlikely to erode the site's otherwise open nature and would not therefore affect the character and appearance of this part of the AONB.
24. Accordingly, I do not find conflict with Policies CS2 and CS 17 of the Council's adopted Core Strategy (July 2008), Policy L1 of the adopted WDLP or the Chilterns Building Design Guide and the Chilterns Management Plan. These policies and guidance seek to ensure that protect the special character, appearance and natural beauty of the AONB and its setting whilst supporting proposals for housing that support local needs of a kind that respects the particular character and sense of place of individual settlements. These policies are consistent with paragraph 115 of the Framework in terms of conserving areas of landscape value.

Whether an efficient use of land

25. The Council contends that eight dwellings as depicted in the illustrative drawings would amount to an inefficient use of land contrary to Core Strategy policies CS1 and CS19 and to LP Policies G3 and G26. These policies set out to ensure that new development is designed to a high standard and respects local distinctiveness and sense of place.
26. However, layout and external appearance are matters that are reserved for future approval. Further, there is an acceptance that the appellant's layout drawing is for illustrative purposes only. Given the ability also of imposing

conditions, I do not believe that there would be material conflict with the above policies and am satisfied that the proposed residential development located on a more restricted site would provide an efficient use of land.

Affordable Housing

27. A signed Unilateral Undertaking (UU) has been provided that covenants to the making of a financial contribution towards off-site affordable housing provision. However, following a Court of Appeal judgement the Written Ministerial Statement (WMS) of 28 November 2014 stating that for sites supplying less than 10 houses, or 5 in certain rural areas, contributions towards affordable housing should not be sought has been reinstated.
28. Whilst the WMS is a statement of national policy and a significant material planning consideration, the Council believes that it has sufficient evidence to demonstrate that relevant policies of the Council's development plan in so far as affordable housing is concerned would outweigh the WMS. Areas within the AONB have been designated as rural under the Housing (Right to Acquire or Enfranchise) (Designated Rural Areas in the South East) Order 1997. Consequently the Council's policy requirement that affordable housing should be provided on sites of 5 dwellings or more would meet the tests set out in Regulation 122(2) of The Community Infrastructure Levy Regulations 2010.
29. That said, there is a disagreement between the parties over the precise wording of the Unilateral Undertaking. Whilst this may be so, as I am dismissing this appeal on the substantive grounds set out in the Council's decision notice, I do not need to dwell heavily on this issue. The presence of a signed UU does not therefore weigh heavily in favour of the proposed development and particularly so given that the scheme is for market housing.

Loss of Employment Land

30. It is a core planning principle of the National Planning Policy Framework (the Framework) at paragraph 17 that planning should proactively drive and support sustainable economic development and should deliver the business and industrial units the country needs. It also supports local planning authorities to promote policies designed to support economic growth in rural areas. However, the document at paragraph 22 also advises that where there is no reasonable prospect of a site being used for an allocated employment use, applications for alternative uses should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable communities.
31. The appeal site is presently in Class B2 and B8 use. Policy DM5 of the Adopted Delivery and Sites Allocations Plan (DSAP) July 2013 sets out to safeguard sites for B1, B2 and B8 employment-generating uses in order to help promote rural regeneration. Proposals for alternative residential uses would need to demonstrate that the site has been actively marketed for exclusively employment purposes for a reasonable period and that it is no longer viable or practicable for an employment-generating use.
32. The appellants have not provided any evidence that the site has been effectively marketed and therefore cannot demonstrate that the site is no longer viable for the various forms of employment-generating uses. The appellant has produced a letter from a commercial letting agency which states

that the site would not be well received if placed on the open market either for sale or to let for commercial purposes. However, this is insufficient evidence and I must give significant weight to a recently adopted development plan.

33. I conclude that the proposed development would have a significantly harmful effect on rural regeneration in the District, contrary to the provisions of Policy DM5 of the DSAP. This Policy is consistent with the Framework that seeks to support a prosperous rural economy.

Other considerations

34. The appellant points out that the Council is unable to demonstrate a five years' supply of deliverable housing land. The Council does not contest this. In such circumstances, paragraph 49 of the Framework is invoked insofar as relevant policies for the supply of housing should not be considered up-to-date. I am aware that there has been a recent Court of Appeal judgement² which considered that Green Belt policies could be relevant policies for the supply of housing. However the judgement explains that it will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight to be given to conflict with policies that are out-of-date.
35. In the circumstances of this case therefore, Policy CS9 of the Core Strategy and Policy GB2 of the WDLP, as policies relevant to the supply of housing should, in the context of paragraph 49 of the Framework not be considered up-to-date. This suggests that a reduction in weight to be apportioned to them, and requires that paragraph 14 of the Framework is, at this stage, engaged. However, notwithstanding this point and noting that I have identified a modest divergence of Policy GB2 with paragraph 89 above, its overarching purpose remains broadly consistent with that of the Framework in respect of the Green Belt. As such, and in accordance with paragraph 215 of the Framework, I am therefore still able to afford it substantial weight. Moreover, the second strand of the fourth bullet point of paragraph 14 makes it clear that the presumption in favour of sustainable development set out therein should only apply where specific policies of the Framework indicate development should be restricted. Footnote 9 to this statement makes specific reference to Green Belt policy in this regard.
36. Thus notwithstanding the lack of a five year housing supply and the reduction in weight afforded to the development plan policy, the last strand of the fourth bullet point of paragraph 14 disapplies the presumption in favour of the development that might have existed.
37. That said, although the contribution to housing supply may be limited in this case, the development would nevertheless boost supply in a relatively sustainable and accessible location and is therefore a matter that weighs in favour of the proposed development. However Planning Policy Guidance is clear that unmet housing need is unlikely to outweigh the harm to the Green Belt and other harm to constitute the very special circumstances justifying inappropriate development in the Green Belt. In these circumstances therefore, this benefit would only attract limited weight.

² Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East. SCLG [2016] EWCA Civ 168

The Green Belt Balance

38. The parties acknowledge that the proposed development represents inappropriate development that would conflict with national and local planning policy to protect the Green Belt. This carries with it substantial weight. I have also found that the proposal would be harmful to the openness of the Green Belt notwithstanding the applicant's contention that the extent of the development be restricted to that area containing buildings and other hardstanding areas. As openness is one of the most important attributes of the Green Belt, this constitutes substantial additional harm that weighs further against the proposed development. In addition, I am not presently convinced that the buildings on site will not continue to provide employment within a rural area. This consideration, supported by an up-to-date development plan policy is also of substantial weight against the proposal.
39. On the other side of the balance, I have found that the proposed development would not undermine the character and appearance or scenic beauty of the AONB but rather, on balance represent an enhancement by comparison with what is presently found here and would build on brownfield land, both of which are matters of moderate weight in its favour. Moreover it has the potential to make a modest contribution to the provision of affordable housing, subject to completion of satisfactory legal agreements, which again is of moderate weight in favour of the proposed development. As explained previously, the modest contribution towards meeting local housing supply can only be given limited weight given the site's Green Belt location.
40. Consequently, the considerations in favour of development would not be sufficient to outweigh the harm to the Green Belt that would arise as a result of the proposed development. Neither would they constitute the very special circumstances that would be necessary to justify the proposal.

Conclusion

41. For these reasons and having considered all other relevant matters raised, I conclude that this appeal should be dismissed.

Gareth W Thomas

INSPECTOR