



Appeal Decision

Site visit made on 4 July 2019

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal Ref: APP/Y3615/W/18/3208075

Send Hill Farm, Potters Lane, Send, Woking, Surrey, GU23 7JJ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Russell Elrick against the decision of Guildford Borough Council (the LPA).
- The application Ref. 18/P/00696, dated 11 April 2018, was approved on 6 July 2018 and outline planning permission was granted subject to conditions.
- The development permitted is: *Outline application for redevelopment of about 0.49 hectares of "previously developed" Green Belt land to include retention of existing access and creation of new access off Potters Lane, erection of one replacement dwelling and up to three new dwellings, erection of one replacement workshop, retention of limited areas of hardstandings and construction of some new hardstandings, demolition of specified existing buildings, structures and residual hardstandings, phased to coincide with occupation of their relevant replacements. All matters reserved except access and details of the workshop in terms of appearance, siting and scale.*
- The conditions in dispute are Nos. 6, 8(i), 9 and 12 which state: 6. *The workshop shall cease all operations immediately for failure to meet any of the requirements set out in (i) to (iii) below. (i) within three calendar months of the date of this permission a parking management plan specifying the provisions to be made for the parking of staff and deliveries to the workshop hereby approved shall be submitted to in writing by the local planning authority. The parking management plan shall include a) details of the parking layout, including details of the delivery loading and unloading area, and b) details of turning area for vehicles using the workshop so that the vehicles can enter and exit the site in forward gear. ii) within seven calendar months of the date of this decision the parking management plan referred to above shall have been approved in writing by the local planning authority and fully implemented in accordance with the details or, if the local planning authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal or appeals shall have been made to, and accepted as valid by the Secretary of State. iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State and fully implemented in accordance with the approved details within three calendar months of the appeal decision. Thereafter, the workshop shall only operate in accordance with the approved information.* 8 *Contaminated land requirements in relation to the land not identified on the approved block plan as being within the 'Cassini site' (land including the workshop, DW1 and landscape buffer): (i) Prior to commencement of groundwork in the proposed landscaped area, a detailed remediation to bring the site to a condition suitable for the intended use, shall be submitted to and approved by the Local Planning Authority. The remediation scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures and any necessary long term maintenance and monitoring programme. The development shall be carried out in accordance with the approved remediation scheme unless otherwise agreed in writing by the Local Planning Authority. Prior to the first occupation of dwelling dw 1 a verification report containing substantiating evidence*

demonstrating that the agreed remediation has been carried out shall be submitted to and agreed in writing by the Local Planning Authority. 9. The replacement dwelling dw 1 hereby approved shall not be first occupied unless and until the vehicular access to Potters Lane has been finished and provided with visibility zones in accordance with the approved plans, Drawing No. SHF/FG/02, and thereafter the visibility zones shall be kept permanently clear of any obstruction over 1.05m high. 12. The premises, marked as 'Existing Replacement Workshop' on drawing SHF/FG/02, shall be used as a wood joinery workshop and for no other purpose or use. This includes any other purposes in Class B2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) or any material change of use permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), (or any Order revoking or re-enacting or amending those Orders with or without modification).

- *The reasons given for the conditions are: 6. In order that the development should not prejudice highway safety nor cause inconvenience to other highway users. 8. To ensure that risks from land contamination to neighbouring land and future users of the land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off site receptors. 9. In order that the development should not prejudice highway safety nor should it inconvenience other highway users. 12. In granting this permission the Local planning authority has had regard to the special circumstances of this case and wishes to have the opportunity of exercising control over any subsequent alternative use in order to assess impact on Green Belt and impact on neighbouring amenity.*
-

Decision

1. The appeal is allowed and planning permission Ref. 18/P/00696, dated 6 July 2018, for the redevelopment of about 0.49 hectares of "previously developed" Green Belt land to include retention of existing access and creation of new access off Potters Lane, erection of one replacement dwelling and up to three new dwellings, erection of one replacement workshop, retention of limited areas of hardstandings and construction of some new hardstandings, demolition of specified existing buildings, structures and residual hardstandings, phased to coincide with occupation of their relevant replacements, with all matters reserved except access and details of the workshop in terms of appearance, siting and scale is varied. Permission Ref. 18/P/00696 is varied by deleting conditions Nos. 4, 6, 9 and 12 and replacing condition Nos. 4, 6 and 9 with the following conditions:
 4. The development hereby permitted shall be undertaken in accordance with the details specified on the following approved plans: SHF/FG/01; SHF/FG/02A, SHF/FG/21; SHF/FG/22; SHF/FG/23 and; SHF/RMA/11.
 6. The replacement workshop shall be operated in accordance with the parking and turning arrangements shown on plan ref. SHF/RMA/11.
 9. The replacement dwelling dw 1 hereby approved shall not be first occupied unless and until the vehicular access to Potters Lane has been finished and provided with visibility zones in accordance with the approved plans, Drawing No. SHF/FG/02A, and thereafter the visibility zones shall be kept permanently clear of any obstruction over 1.05m high.

Preliminary Matters

2. The disputed conditions, set out in the fifth bullet point above, reflect what has been agreed within a Statement of Common Ground that has been signed by both main parties.
3. Condition 4 of the permission specifies the approved drawings. These include plan ref. SHF/FG/02A. This condition also includes the words "and no other plans". However, condition nos. 9 and 12 refer to plan ref. SHF/FG/02, which is not included within condition 4. I concur with the LPA that this appears to be a drafting error within its decision notice. It is not a matter that was raised on behalf of the appellant and, in submitting the appeal, the appellant's agent supplied copies of plan ref. SHF/FG/02A not 02. No party would be prejudiced if, for the purposes of clarity, I was to delete condition 9 and replace it with another 'access condition' specifying SHF/FG/02A. Moreover, if I find that any other submitted plans should be specified within condition 4, for the purposes of clarity, it would be necessary to delete this condition and replace it with another 'plans' condition.
4. In April 2019, the LPA adopted the Guildford Borough Local Plan: Strategy and Sites 2015-2034 (LP). This supersedes some policies in the Local Plan 2003.
5. The appeal site lies within the Metropolitan Green Belt (GB) and is within 400 metres – 5 kilometres of the Thames Basin Heaths Special Protection Area (SPA). I note that these matters were considered by the Council when it determined the application, as well as other applications¹ for similar development on the site. There is no dispute between the main parties in respect of the likely impact on the GB or SPA and nothing of substance to demonstrate any harmful impact to these designated/protected areas.
6. The replacement workshop building has been erected on part of the appeal site and is in use for joinery purposes. Three new houses have also been built on another part of the site and on land referred to as 'the Cassini site'.
7. Both main parties have made applications for an award of costs against each other. These applications are the subject of separate decisions.

Main Issue

8. The main issue is whether the disputed conditions accord with the tests set out within paragraph 55 of the National Planning Policy Framework (the Framework) and are not Wednesbury² unreasonable.

Reasons

Condition 6

9. Notwithstanding the discharge of this condition under a separate reserved matters application in May 2019 (ref. 19/D/00055), the appellant wishes this condition to be considered against the relevant tests.

¹ The site has a lengthy planning history. This includes a previous planning appeal in respect of two conditions (removal of permitted development rights and restrictions on the size of the new buildings) for a similar development on the site (ref. APP/Y3615/W/17/3186911), as well as two enforcement appeals (refs. APP/Y3615/C/14/2220790 & 2220793).

² Newbury District Council v Secretary of State for the Environment [1981] AC 578.

10. The appellant's existing dwelling and workshop are accessed from a single vehicular access from Potters Lane. Having regard to the transport provisions of LP policy ID3 and paragraph 108 of the Framework, vehicles parking along the highway and/or attempting to reverse onto Potters Lane, could interrupt the free-flow of traffic along this part of the road or compromise highway safety interests. It is important therefore to ensure adequate parking and turning facilities are provided within the appeal site.
11. As I saw during my visit, the workshop is of a very modest size (approximately 150m²) and there is adequate space around this building for vehicular parking and turning. This is shown on one of the plans (ref. SHF/RMA/11) that has been approved by the LPA under a subsequent reserved matters application for the site (ref.19/P/00602). This plan was not available to the LPA when it considered the outline application and, as the workshop was not part of the reserved matters, I appreciate why the LPA considered it necessary to attach a condition requiring details of the parking arrangements.
12. Nevertheless, as worded, this disputed planning condition is somewhat excessive and unnecessary to safeguard highway interests. It does not meet all of the tests to which paragraph 55 of the Framework relates and should therefore be deleted. This aspect of the appeal therefore succeeds. Instead, and in the interests of highway safety and maintaining the free-flow of traffic along Potters Lane, this condition should be replaced by another requiring the workshop to be operated in accordance with the parking/turning arrangements shown on plan ref. SHF/RMA/11. A condition to this effect accords with paragraph 55 of the Framework and would not be Wednesbury unreasonable. In so doing, it would be necessary to include this within a new 'plans' condition.

Condition 8(i)

13. Amongst other things, the Framework requires that a site is suitable for a development taking account of ground conditions and any risks arising from contamination. This includes land remediation. Adequate site investigation information, prepared by a competent person, should also be available to inform such assessments.
14. Part of the appeal site has been found to have elements of contamination. Following consultation with the Council's Environmental Health Officer condition no. 8 was attached to the permission. Whilst the appellant has argued that the LPA should have specified any additional remediation criteria and is critical that no reference is made of BS3882:2015, this does not render the condition either imprecise or unreasonable. Furthermore, a verification report is required to ensure that the necessary remediation has been undertaken.
15. I agree with the LPA that condition 8 is necessary to ensure the safety of those living and working on the site. It is also relevant to planning and the development permitted, enforceable, precise and reasonable in all other respects. Moreover, it is not Wednesbury unreasonable. This aspect of the appeal should not therefore succeed.

Condition 9

16. To ensure that occupiers of the replacement dwelling had a safe and convenient access to/from the Potters Lane and to avoid the risk of cars being parked along the highway and interrupting the free-flow of traffic, it would be

necessary to ensure that the approved access was provided before this new dwelling was occupied.

17. The extent of this access is clear from the approved drawing plan ref. SHF/FG/02A and specified in condition No.4. I also concur with the LPA that the word "*finished*" has a clear dictionary meaning and, subject to specifying the correct approved plan, is not imprecise. This planning condition is relevant to planning and the development permitted, enforceable and is reasonable in all other respects. It satisfies the tests of paragraph 55 of the Framework and is not Wednesbury unreasonable.
18. Following consultation with the Local Highway Authority, the LPA is content that the approved access is in the correct position and that the visibility splays have been provided in accordance with the details specified on the approved plans. As this access is already being used in connection with the replacement workshop as well as the appellant's existing dwelling, the LPA has by way of a compromise, offered to vary the terms of this condition by requiring the access to be completed within three months following completion of the dwelling. Whilst I note the LPA's offer, given my findings above regarding condition 9, this would be a separate matter for the parties.

Condition 12

19. The approved joinery workshop is within close proximity to the appellant's existing dwelling and would be in close proximity to the replacement dwelling when built. Dwelling dw2³ on the adjoining 'Cassini site' is also nearby. As a B2 use, this workshop has the potential to generate noise and disturbance.
20. The Framework also requires development to create places with a high standard of amenity for existing and future users. Given the relationship between the workshop and neighbouring dwellings I appreciate the LPA's reason for wanting to avoid any harmful noise disturbance.
21. However, other (non-disputed) conditions on the outline permission require a noise management plan for the workshop (including details of noise insulation), as well as a restriction on the hours of business operation. Furthermore, the Government's Planning Practice Guidance advises that conditions restricting the future permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.
22. There is nothing before me to demonstrate that a different B2 use of the workshop would cause any material harm to the GB or that the noise management plan and/or restriction on the hours of use would be any less effective in avoiding noise or disturbance should a different B2 use operate from the building in the future. I also note the appellant's argument that should any environmental issues arise from a different B2 use there is separate legislation to control any nuisance and/or pollution should it arise.
23. There are no exceptional circumstances to justify condition 12. It is unnecessary and does not meet all of the tests set out in paragraph 55 of the Framework. This aspect of the appeal should therefore also succeed.

³ The two first floor windows on the facing flank wall of this new dwelling are to a bedroom and bathroom and are required, by way of a planning condition on a separate permission, to be fixed shut.

Conclusion

24. Given that I have found that some conditions should be deleted and/or replaced with other conditions (including condition 4), the appeal succeeds in the terms set out above, insofar as it relates to conditions 6, 9 and 12, but fails in respect of condition 8(i).

Neil Pope

Inspector