

Appeal Decision

Hearing held on 16 July 2019

Site visit made on 16 July 2019

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2019

Appeal Ref: APP/K2230/W/18/3211128

Land at Willerby Farm, Downs Road, Istead Rise DA13 9HH

- 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 Esquire Developments Limited against the decision of Gravesham Borough Council.
 - The application Ref 20180188, dated 23 February 2018, was refused by notice dated 20 April 2018.
 - The development proposed is described as 'Full application for the demolition of existing buildings and erection of 8no. dwellings, comprised of 6no. 3-bed houses and 2no. 2-bed bungalows, associated parking, hardstanding, landscaping, infrastructure and earthworks.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The fourth reason for refusal refers to the failure of the applicant to provide ecological evidence to inform an assessment under the Habitat Regulations with regard to the effect of the proposal on the North Kent Marshes Special Protection Area (SPA)/Ramsar Sites. Nor was a financial contribution towards the mitigation of any effect offered.
3. The then applicant subsequently supplied the necessary ecological information and an Appropriate Assessment (AA) under the Habitat Regulations was undertaken. The AA found that the effect of the proposal could be mitigated by the payment of a financial contribution towards the Strategic Access Mitigation and Monitoring Strategy for the SPA/Ramsar Sites. Natural England has been consulted on this matter and accepts that the proposed means of mitigation would be acceptable. Hearing Document 1 is a signed agreement confirming that the necessary contribution has been made and will be used for the purposes of mitigating the effect of the proposal on the SPA/Ramsar Sites.
4. The parties agree that this overcomes the fourth reason for refusal and I have no cause to take a different view. I have framed the main issues accordingly.

Main Issues

5. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt;
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- the effect of the proposal on the openness of the Green Belt;
- the effect of the proposal on the landscape character of the area;
- the effect of the proposal on the living conditions of future occupiers with particular regard to noise, odour and farm vehicles and plant;
- whether or not the proposal makes adequate provision for affordable housing;
- other considerations;
- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal?

Reasons

Whether Inappropriate Development?

6. The appeal site adjoins, but is outside, the settlement boundary for Istead Rise as defined in the Gravesham Local Plan Core Strategy 2014 (CS). As such, the site is within the Metropolitan Green Belt. Policy CS02 of the CS supports development outside of settlement boundaries where it is compatible with national policies for protecting the Green Belt and other CS policies. Paragraph 4.2.6 of the CS advises that settlement boundaries do not represent the full extent of the built up area.
7. National Planning Policy Framework (the Framework) paragraph 145 states that the construction of new buildings in the Green Belt will be inappropriate unless they fall into specified exceptions. These include limited infilling in villages (exception (e)). I agree with the parties that Istead Rise should be regarded as a village for the purposes of Green Belt policy. It is also common ground that the fact that the site is outside of the settlement boundary is not determinative of whether or not it is 'in' the village when considering exception (e).
8. The appeal site contains three agricultural buildings. The buildings are fairly substantial in scale and height and much of the remaining site area is hard-surfaced. Nevertheless, the buildings are utilitarian in appearance and there are substantial spaces around them. This gives the site an uncluttered, agricultural character. It is, therefore, readily distinguishable from the residential areas to the east (Long Walk) and north (Downs Road). Here, the adjoining buildings are domestic in scale and appearance, more closely and regularly spaced and enclosed by fences and planting. Parking and domestic paraphernalia reinforces the residential character of these areas. Moreover, the site's eastern boundary with Long Walk is marked by a reasonably strong and consistent boundary of fencing and planting.
9. The differing characters of the site and adjoining residential areas are apparent when viewed both at close range from Downs Road opposite the site and from the medium range glimpses available on the approach to the site from the west (for example, viewpoints 11 and 13 in the appellant's Verified View Montages (CD2/21)).
10. The land to the south of the site is occupied by further buildings in agricultural use. Whilst one of these has the scale and form of a domestic bungalow, its use and setting is clearly agricultural. To the west of the site is open,

agricultural land. The character and appearance of the appeal site gives it a far greater affinity with these agricultural areas to the south and west than with the residential areas to the east and north.

11. The appeal site, the agricultural buildings to the south, much of the agricultural land to the west and the Long Walk residential area to the east occupy the same north-facing slope. As such, the topography of the area does little to define whether or not the appeal site is in the village.
12. My attention has also been drawn to developments which have taken place beyond the Istead Rise settlement boundary. However, the circumstances which led to those developments have not been provided and this limits the weight I can attach to them.
13. Overall therefore, notwithstanding that the appeal site shares two boundaries with established residential areas, I consider that it should not be regarded as being 'in' the village for the purposes of Framework paragraph 145(e). Although I have reached this finding based on visual and physical characteristics, it is consistent with the Council's contention that the appeal site has been, historically, excluded from the settlement.
14. Neither the Framework or the development plan provide a definition of infilling. The appellant prefers the dictionary definition of the word to the unreferenced definition provided by the Council and cites previous appeal decisions in support of this approach^{1,2}. Whilst the Gravesham appeal decision does, indeed, note that the Council's definition is not determinative, it nevertheless uses terms including 'built frontage' and 'discernible groups of closely associated buildings'. It seems to me that these are useful concepts in considering whether a proposal amounts to infilling. Moreover, they are implied in the quoted dictionary definitions which refer to buildings 'between existing structures' and 'between other buildings in already developed areas.'
15. The appeal site has a far greater width (some 94m) than depth. It is bounded to the north by the rear garden of a substantial dwelling which fronts onto Downs Road and by the loose collection of agricultural buildings to the south. This is illustrated in the Infilling Plan at appendix C of the appellant's statement. However, I have already found that the character and appearance of the nearby residential and agricultural buildings are markedly different. Nor, given the width of the appeal site, can they be regarded as a discernible group or closely associated. As such, I consider that the buildings flanking the appeal site do not form a built frontage. It follows from this that, although the appeal proposal would fill a space, it would not amount to infilling for the purposes of Framework paragraph 145(e).
16. Both parties have drawn my attention to appeal decisions which have considered the question of the scale of development that can be regarded as 'limited' for the purposes of Green Belt policy. The number of dwellings involved in these decisions varies considerably and suggests that the matter should be assessed having regard to the particular circumstances of the case. The appellant has sought to relate the scale of the proposed development to the overall size of Istead Rise. However, none of the appeal decisions it cites³

¹ Appeal ref: APP/K2230/W/17/3176951

² Appeal ref: APP/E2734/W/15/3140259

³ Appeal refs: APP/J3720/W/16/3167715, APP/Y3615/W/16/3150853 and APP/M3645/W/16/3141780

rely explicitly on the relationship between the number of dwellings in those appeal schemes and the size of the settlements to determine the meaning of 'limited' in Green Belt policy, much less offer any guidance as to what an acceptable ratio might be.

17. The appellant also seeks to rely on definitions given in the Framework. However, none of these refer to 'limited' development and none refer to Green Belt policy. As such, they are of limited assistance in this matter.
18. Rather, I consider that whether the proposal amounts to limited development should be considered in a more local context. In that regard, I note that the appeal site extends south from Downs Road by almost the same distance as Long Walk. Although the number of houses proposed would be fewer than in Long Walk, they would fully occupy the site. The appeal site is also significantly broader than the Down Roads frontage formed by the four dwellings between Long Walk and the site entrance. In this context I find that the proposal would not amount to 'limited' development.
19. Overall, therefore, I conclude that the proposal would not represent limited infilling in a village and, consequently, would be inappropriate development in the Green Belt.

Openness

20. Since I have found that the proposal would be inappropriate development, it is also necessary to consider its effect on openness. Framework paragraph 133 advises that openness is one of the essential characteristics of the Green Belt. The appellant's evidence is that the existing buildings on the site have a total footprint of 680 sqm and the existing hardstandings extend to 1751 sqm. The appeal buildings would have a total footprint of 698 sqm and the hardstandings an area of 1649 sqm. These figures have not been disputed by the Council and indicate that there is little to choose between the existing position and the appeal proposal in terms of the amount of physical development on the site.
21. The existing buildings are also generally taller and larger in scale than those proposed. That said, I have already referred to the uncluttered, agricultural character of the site at present. This form of development is expected, and can be not inappropriate, in the Green Belt. The appeal scheme would increase the number of buildings on the site and reduce the spaces between them. It would also introduce or add to the boundary fences, planting, vehicle parking and other domestic paraphernalia at the site. These changes would have an enclosing effect compared with the existing situation. Whilst the site is not visually prominent, the effect would be readily discernible in close and medium range views from the west along Downs Road and glimpsed in views between the houses in Long Walk and from locations on higher ground within Istead Rise. Consequently, I consider that the appeal proposal would result in a minor loss of openness.

Landscape Character

22. As the appellant's landscape statement finds, the appeal site and surrounding area is not covered by any national or development plan landscape designation and nor is it a valued landscape for the purposes of Framework paragraph 170. Nevertheless, Policy CS12 of the CS seeks to conserve, restore or enhance the overall landscape character. It also requires proposals to have regard to the

Gravesham Landscape Character Assessment (LCA). Policy CS19 requires development to conserve and enhance the natural environment and integrate well with the local area.

23. The appeal site falls within the Istead Arable Farmlands area as defined in the LCA. The condition of the landscape is assessed as poor, although this largely reflects the presence of electricity pylons generally, rather than the condition of the landscape in the vicinity of the appeal site. Its sensitivity to change is moderate. The LCA guidelines seek to restore distinctive elements of the landscape and create elements that support its character. It identifies the key characteristics of the Istead Arable Farmlands, which include gently undulating topography with open arable fields and the Istead Rise modern housing development. Both influence the landscape setting of the appeal site. Nevertheless, whilst the modern development of the village adjoins and is visible from the appeal site, for the reasons set out above, I consider that the site has a greater affinity with the rural landscape than with the built-up area of Istead Rise. Consequently, the existing urban edge is formed by the site's eastern boundary.
24. The existing buildings on the site are not particularly visually attractive. However, they are typical of more modern farm buildings and do not appear to be in a state of significant disrepair. The hedge on the site's western boundary filters views from that direction. This helps to ensure that, whilst the existing buildings are visible in the wider landscape, they are not prominent. Consequently, I consider that they do not detract from the landscape character of the area.
25. There is no substantive evidence to suggest that the appearance or layout of the proposal would be objectionable of itself. Its linear layout would be consistent with Long Walk and the form, materials and detailing of the proposed buildings would reflect the more vernacular local architecture. External lighting could be controlled by condition. The height of the proposed buildings would reduce as the land rises towards the southern end of the site, and this would respond to the topography of the area. The area of hard-surfacing at the site would be broadly unchanged. These features of the proposal would, to some extent, help it to comply with the LCA guidelines for the Istead Arable Farmlands area. Fundamentally however, the proposal would give the appeal site an unmistakably residential character with the inevitable attending enclosure, activity, lighting and domestic paraphernalia. As such, it would lead to the encroachment of modern residential development into the rural landscape.
26. The proposed reinforcement of the planting on the site's western boundary would help to soften this effect in views from the west. However, it would not significantly diminish the change in the character of the site itself. Nor, given my findings on the location of the existing edge of the built-up area and the visual effect of the existing buildings, is it necessary to reinforce the hedge in order to provide a positive edge to the urban area.
27. I recognise that the appeal proposal would be visible from a limited number of viewpoints. Furthermore, with the exception of the close range view along the site access, it would not be conspicuous in external views. Nevertheless, by virtue of its impact on the rural character of the site and its setting, I consider the proposal would not conserve, restore or enhance the landscape. As such, it

would conflict with CS Policy CS12. It would also conflict with CS Policy CS19 to the extent that it requires development to conserve and enhance the character of the natural environment.

Living Conditions

28. Prior approval has been given for a grain store in one of the buildings to the south of the site (reference 20170653). The grain store would be accessed via the appeal proposal access. The prior approval does not impose conditions restricting the times of operation of the grain store. The Council's Regulatory Services (Noise) consultation on the application expressed significant concerns regarding the noise impact on future occupiers of the proposed dwellings of vehicle movements and plant used to load the grain store. In particular, it questioned whether the activities would be restricted to the day time. Evening activity would result in the noise levels exceeding the background level by enough to cause a significant adverse impact based on a British Standard 4142 assessment undertaken by the then applicant.
29. The appellant's appeal evidence (Statement appendix H) indicates that the retained agricultural buildings, including the grain store, would be used largely for activities related to the farming of the 29 hectares at Willerby Farm and that other facilities are available to serve the larger rented holding at Bean Farm. The number of movements is stated to vary through the year but would not exceed ten movements of agricultural vehicles per month. Additional movements by delivery vehicles and the like would also be few in number. The evidence also indicates that most activity, including that associated with the grain store, would take place during normal working hours.
30. Whilst there is no certainty that the level and times of usage of the access and the grain store would be as the appellant's evidence contends, nor has the Council provided substantive evidence to show that the usage would be significantly more extensive. On the balance of probabilities therefore, I consider that the appellant's evidence provides a reasonable basis for considering the effects of the agricultural operations on the living conditions of future occupiers.
31. The noise generated by the activity associated with the retained agricultural building could, potentially, result in occasional exceedances of background levels by a sufficient amount to have a noticeable effect on future occupiers. However, having regard to the likely frequency and times of day of those activities, I consider that, their overall noise impact would not be significant.
32. The Council has also expressed concern regarding the effect of vehicle movements on the safety of future occupiers. However, this concern is not supported by technical evidence and there was no objection to the proposal from the local highway authority. I also note that the proposed road layout has been the subject of a Stage 1 Road Safety Audit which did not raise this matter as a problem.
33. The proposed shared surface carriageway would be 4.8m wide with a 1.8m pedestrian zone. It would be essentially straight with no impediments to forward visibility. The proposed houses would be set back from the carriageway behind front gardens and parking areas. I recognise that the access would be a cul de sac and that it may be inviting for children to play there. Notwithstanding, given the configuration of the carriageway and the

likely low frequency of movements of agricultural vehicles, I consider that the access arrangements would not pose an undue risk to the safety of future occupiers.

34. The Council has also expressed concern regarding the impact on future occupiers of odours from the agricultural activity. However, no livestock would be kept in the buildings adjoining the site and there is nothing to suggest that the grain storage or other activities would emit significant odours.
35. The Council has drawn my attention to two appeal decisions⁴ where the effect of agricultural operations on the living conditions of residential occupiers was a reason for dismissal. In both decisions, the dwellings appeared to be in closer proximity to the farming operations than would be the case in the current appeal. My conclusions on this matter are based on the site specific circumstances of the appeal proposal and, as such, the cited appeal decisions offer little assistance.
36. Overall, therefore, I find that the proposal would not have a harmful effect on the living conditions of future occupiers by reason of noise, odour or farm vehicles or plant. It would not, therefore, conflict with CS Policy CS19 insofar as it requires development to avoid adverse environmental effects, including noise and odour and to create a safe and secure environment.

Affordable Housing

37. Policy CS16 of the CS requires the provision of affordable housing on all new housing developments of three units or more in the rural area. However, Framework paragraph 63 states that affordable housing should not be sought on residential developments which are not 'major developments' (that is, sites of 10 units or more) unless they are in designated rural areas in which case a threshold of 5 units may be applied. Whilst the appeal site falls within the rural area for the purposes of CS Policy CS16 (and is therefore subject to the three unit threshold), it is not within a 'designated rural area' and, therefore, is subject to the 10 unit threshold in Framework paragraph 63. As such, there is inconsistency between the requirements of CS Policy CS16 and the Framework.
38. The statutory duty is to determine the appeal in accordance with CS Policy CS16 unless material considerations indicate otherwise. The Framework is an important material consideration which post-dates the CS. Whilst Framework paragraph 213 advises that development policies should not be considered out of date simply because they predate the Framework, it goes on to say that they should be given weight according to their consistency with the Framework.
39. The appellant contends that greater weight should be placed on the Framework and, accordingly, the proposal makes no provision for affordable housing. The Council argues that the need for affordable housing locally justifies the application of the three unit threshold. It points to evidence from the Istead Rise Housing Needs Surveys of 2012 and 2017 (draft) which show the need for affordable housing in the village increasing from 8 to 10 households. The Strategic Housing Market and Economic Needs Assessment for Gravesham, as well as Housing Needs Surveys for nearby villages, also show an unmet need in the wider area. The evidence also indicates that the affordability of housing in the Borough has decreased over time.

⁴ Appeal refs: APP/Y2736/W/14/3002184 and APP/Q3305/A/14/2229228

40. No new sources of affordable housing in Istead Rise have been identified. However, the overall supply is likely to increase with a Site Allocations Issues and Options Development Plan Document due to be adopted in 2022. It is anticipated that sites for some 2000 dwellings will be identified. Moreover, the need for affordable housing in Istead Rise is relatively modest and I note that only one of the households identified in the 2017 Survey is a family. The others are single persons and couples and, as such, the two and three bedroom dwellings proposed may not best suit their needs. No firm evidence has been presented to show the effect of the provision of affordable housing on the viability of the proposal. However, the reason for the threshold given in the initial Written Ministerial Statement and now reflected in the Framework was to ease the burden on smaller developers. The appellant in this case falls into that category.
41. On the basis of the evidence presented therefore, I consider that the extent of the affordable housing need identified in Istead Rise does not outweigh the conflict between CS Policy CS16 and Framework paragraph 63. Consequently, had I been otherwise minded to allow the appeal, the conflict with Policy CS16 would not have counted against the proposal.

Other Considerations

42. The parties agree that the Council cannot demonstrate a five year supply of housing land. The figure is said to be in the order of 4.4 years. However, since I have found conflict with Green Belt policies, the presumption in favour of sustainable development does not apply⁵. Moreover, I have already referred to the steps being taken by the Council to increase the supply of housing. Whilst some of this may be on land released from the Green Belt, that process should not be pre-empted by decisions on individual appeals. Notwithstanding, the proposal would make a modest contribution to the supply of housing in an area where there is currently a shortfall in supply. I have already referred to the appellant as a small developer and Government policy is to support the contributions which such companies can make to meet the need for new housing.
43. The appellant has advised that the existing buildings at the site are only used for storage and are impractical for use by modern farm machinery. Moreover, the site is subject to contamination which could be remediated as part of the appeal proposal. Paragraphs 117 and 118 of the Framework support the use of under-utilized land and buildings for new housing, particularly where the supply of land is constrained. Paragraph 122 seeks to ensure the efficient use of land. That said, the support offered by the Framework is tempered by the requirements to safeguard the environment (paragraph 117) and for the land to be suitable and within settlements (paragraph 118c). I have found that the appeal proposal does not meet these requirements.
44. At the application consultation stage Design South East commented that the design of the proposal was of 'higher than average quality' and I have found that its appearance would be sympathetic to its surroundings. The proposal is therefore, supported by paragraph 127 of the Framework which seeks to achieve high quality design. Nevertheless, it has not been adequately demonstrated that the design is outstanding or innovative such that great weight should be given to it in accordance with Framework paragraph 131.

⁵ Framework paragraph 11(d)i and Footnote 6

45. The appellant argues that there is a fall-back position whereby the existing buildings at the appeal site could be converted to up to five dwellings under Class Q of the Town and Country Planning (General Permitted Development) Order 2015 as amended. This has not been tested through an application for prior approval to show that the fall-back position is realistic. Amongst other things, determination of the application would need to consider the extent of operations reasonably necessary for the buildings to function as a dwellinghouse. Moreover, even if the buildings could be converted, there is no firm evidence to show that the resulting development would be more harmful than the appeal proposal. For these reasons, I can give limited weight to the fall back position.

Other Matters

46. I have had regard to the other concerns expressed locally, but they have not led me to a different overall conclusion.

Green Belt Balance

47. I have found that the appeal proposal would be inappropriate development in the Green Belt. Framework paragraph 143 advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have also found that the proposal would result in a minor loss of openness. Paragraph 144 confirms that substantial weight should be given to any harm to the Green Belt.
48. Moreover, I have found that the appeal scheme would have a harmful effect on the character of the landscape. Whilst the proposal would not have a harmful effect on the living conditions of future occupiers and it is not necessary to make provision for affordable housing, the absence of further harm does not amount to a positive benefit. The proposal would make a modest contribution to the supply of market housing by a smaller developer and derives a degree of support from making effective use of under-utilized land as well as its higher than average quality of design. Nevertheless, I find that the other considerations in this case do not clearly outweigh the Green Belt harm and other harm that I have identified. The appellant does not claim that the benefits of the proposal amount to the very special circumstances necessary to overcome the Green Belt harm. Looking at the case as a whole, I agree.
49. Consequently, I find that the proposal conflicts with CS Policy CS02 and Framework paragraphs 133 and 143 with regard to Green Belt harm as well as with CS Policies CS12 and CS19 with regard to landscape impact.

Conclusion

50. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR

Appearances

FOR THE APPELLANT

Andrew Wilford	Barton Willmore (planning)
Joshua Mellor	Barton Willmore (planning)
Matthew Chard	Barton Willmore (landscape)
Sam Snart	Hobbs Parker Property Consultants
Paul Lulham	DHA Transport

FOR THE COUNCIL

Richard Hart	Principal Planner, Gravesham Borough Council
Shazad Ghani	Planning Manager, Gravesham Borough Council
Rebecca Harrison	Planning Officer, Gravesham Borough Council

INTERESTED PERSON

Kelvin Curtis	Local Resident
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Hearing Documents

- 1) Signed Strategic Access Mitigation and Monitoring Contribution Agreement
- 2) Written submission by Kelvin Curtis