



Appeal Decision

Site visit made on 22 October 2019

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2019

Appeal Ref: APP/C1570/W/19/3233034

Land East of Oakhanger, Friars Lane, Hatfield Heath CM22 7BE

- 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 and Mrs David and Debbie Worrall against the decision of Uttlesford District Council.
 - The application Ref UTT/19/0140/FUL, dated 21 January 2019, was refused by notice dated 12 April 2019.
 - The development proposed is described as '*New residential development comprising the construction of 8 no. modest new dwellings, 4 of which would be fully affordable, associated access from Friars Lane, the introduction of a new community orchard and associated development. (Re-submission of planning application ref: UTT/18/1437/FUL refused on the 19th November 2018)*'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would be inappropriate development within the Green Belt.
 - The effect on the openness of the Green Belt and purposes of including land within it.
 - If the development is inappropriate, whether the harm, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal.

Reasons

Whether inappropriate development

3. Policy S6 of the Uttlesford District Council Local Plan 2005 ('the LP') states that Hatfield Heath is excluded from the Green Belt. The site is adjacent to but outside the settlement boundary and is in the Green Belt for planning purposes. Although the LP pre-dates the National Planning Policy Framework ('the Framework'), the pre-text defaults to national policy, albeit the former PPG2. The Framework states at paragraph 145 that new buildings in the Green Belt should be viewed as inappropriate and then specifies exceptions. From my reading of the appellant's evidence the primary dispute is whether the proposal

would be an exception under paragraph 145 e), 'limited infilling in villages'¹. There is also reference to other exceptions relating to affordable housing to which I return to below.

4. Relevant case law² dictates that the village boundary defined on a proposals map should not be determinative where the boundary does not accord with the Inspector's assessment of the extent of the village on the ground. In this case, the land slopes down from the north to a well-defined physical boundary that is adjacent to open agricultural fields and interspersed with mature trees and shrubs. It is accessed directly from Friars Lane, with some residential properties opposite that are within the settlement boundary. Although the grassland is maintained by the appellant, my observations on the ground indicate to me that the site has a greater affinity with residential properties in this peripheral part of the settlement than the open agrarian field pattern to the south.
5. Notwithstanding development plan proposals maps, the boundaries of such diverse rural areas and their settlements are in many instances subjective. As a matter of fact on the ground, for the purposes of this appeal I consider this peripheral site should be regarded as being within the 'village' of Hatfield Heath. This appeal therefore turns on the remaining considerations of whether the proposal would amount to 'infilling' and if so, if it would be 'limited'.
6. Neither term is defined in the LP or the Framework and no definition has been put before me by the appellant. They are essentially questions of fact and planning judgement for the planning decision-maker. Consideration of the term 'limited infilling' is not, as the appellant suggests, whether a site abuts the current village boundary. In my experience, to fill a gap between buildings in an otherwise built up/developed frontage is a commonly understood and widely held meaning of the term infill and I note the Council adopted a similar definition.
7. This is not a vacant site in a line of buildings along a street or lane. The extent and shape of the site with the lack of any development to the south means there would be no gap to fill in an otherwise developed frontage, with Oakhanger being the last residential plot on this side of Friars Lane. It would also be a distinctly different form of development — the erection of buildings behind dwellings on the lane and would appear as a small residential housing estate extending into the open countryside. Despite siting some of the dwellings in the northernmost part of the site and therefore partly in between existing residential properties, development would also extend down the slope and beyond the southern boundary of Oakhanger. Consequently, the proposal would not be 'infilling' in any widely held or commonplace definition.
8. For completeness, the term 'limited' suggests a restriction in size, amount or extent. To my mind this requires consideration of, for example, the nature and size of the development itself, the location of the application site and its relationship to other existing development adjoining and adjacent to it. The extent of the site would be larger than the majority of individual neighbouring properties along the lane. There would also be an uncharacteristic internal estate road running across the site and overall, a much denser clustering of development than anything that exists within the locality. The resultant size of

¹ Paragraph 4.6-4.10 of appellant's statement.

² *Julian Wood v SSCLG and Gravesham Borough Council* [2014] EWHC 683 (Admin).

some of the plots, including their gardens and the lack of any road frontage would also not reflect the prevailing character of properties in this part of the village. In my view, the construction of 8 dwellings in combination with the overall extent of the appeal site, development on it and the marked difference in the form and disposition of that development should not be regarded as 'limited'.

9. The appellant has also referred to the provision of affordable housing and other exceptions within paragraph 145 of the Framework. However, no completed planning obligation is before me to secure such housing and discussions 'have been put on hold pending the outcome of the appeal'³. Nonetheless, the Planning Inspectorate's *Procedural Guide Planning Appeals – England 2016* is clear that a certified copy of the executed obligation should be received no later than seven weeks from the appeal start date. In the absence of a completed agreement I cannot be satisfied that affordable housing would be secured and provided. Whilst Policy H11 of the LP allows for rural exception sites it requires 100% of the dwellings to be affordable and that would not be the case here. Furthermore, even if the site should be regarded as Previously Developed Land ('PDL') and the proposal considered under paragraph 145 g), it would not benefit from this exception because it would not be limited infilling and would cause substantial harm to openness.
10. For these reasons, the proposal would be inappropriate development in the Green Belt, by definition this is harmful and the proposal would conflict with Policy S6 of the LP. In accordance with paragraph 144 of the Framework I attach substantial weight to this harm.

Openness and purposes

11. Consideration of openness can have both spatial and visual aspects and the proposal would introduce a substantial amount of built form on to a site which is open and free from any significant development. In spatial terms there would be a substantially greater effect on openness.
12. Turning to the visual dimension, the proposal would be conspicuous from Friars Lane where the view would be of the internal access road running across the site and up the slope with the substantial dwellings placed on both sides. On approaching the village from the south along Friars Lane, the site is prominent due to the sloping topography and because views of existing development are very limited, the clustering of the dwellings on the slope would not be seen in the context of any other similar built form of a comparable scale or extent. Eight 2 and single storey dwellings of the size, mass and height proposed, along with associated domestic paraphernalia, vehicle and other movements would be visually intrusive in this sensitive peripheral area of the village and detrimental to the visual interests of its surroundings.
13. Although existing landscaping may provide some partial screening, this would not be all year round. Additional landscaping could be secured but this would not adequately mitigate the effects because the orchard and any additional planting to the southern boundary would be at the lower part of the valley. It would be subject to a number of factors to be successful and would take a significant amount of time to mature to have any meaningful effect, if at all given the sloping topography and height of some of the dwellings. In the event

³ Appellant's final comments.

of the orchard being planted if the appeal is dismissed, any perceived feeling of openness would not be negated given the topography of the area and lack of any visual or spatial harm from the planting of trees.

14. Even though I have found the site should be regarded as being in a village for the purposes of paragraph 145, the effect of development as encroachment on the countryside may be in the form of loss of openness or intrusion and through the loss of openness, there can be an encroachment into the countryside. That would be the case here where the proposal would cause unacceptable harm to the openness of the Green Belt and would conflict with one of the 5 purposes of including land within it by encroaching into the countryside. The effects would be such that I attach substantial weight to this harm.

Other considerations

15. Eight new windfall homes that could assist local housing needs in terms of mix and type and could be delivered relatively quickly, would be provided in an area with an acknowledged under supply in housing land of 3.29 years. This is a significant benefit in favour of the proposal. I give no weight however in this case to the benefit from affordable housing as there is nothing before me to secure its provision. There would be some small economic and social benefits associated with the scheme, including short term benefits during construction and from the support future occupiers would give to local businesses and services. Given the proposal is for 8 dwellings such benefits weigh moderately in favour of the scheme. Associated biodiversity improvements could flow from the orchard and this carries a small amount of weight in favour given they are not substantiated in any detail. There is nothing substantive before me that supports the view that if not maintained the land would be harmful to the rural setting of the village by appearing derelict and I give this little weight.
16. There is also nothing substantive that indicates the orchard element could only be delivered as part of this scheme and its scale would offer only a small potential benefit to some members of the local community in the form of a recreational and educational resource. There could also be some future negligible financial and other benefits from any associated retail sales. However, there is nothing before me that would ensure access to it and in this particular case, it therefore carries only a small amount of weight in favour.

Other Matters

17. I have been referred to a number of examples which the appellant considers show inconsistency in decision making by the Council⁴. From the information I have been provided with the Westons Yard, White Roding site was PDL and land at Broomfields, Hatfield Heath related to a rural exception site to meet an identified local housing need. The scheme at Foxglove Farm, Hatfield Heath appears to be for conversion of buildings and at Tauntons, White Roding that proposal appears to have been subject to different planning considerations by that decision maker being for a single dwelling. The site at Elms Farm, Stansted relates to a substantially larger development of 58 dwellings and in all cases different considerations and judgements have to be applied and balanced by the decision maker.

⁴ IV of appellant's statement of case.

18. Consistency in decision making is important but I have also not been provided with the full details and each case must be considered on its own merits. Ultimately, what constitutes an exception under Green Belt policy needs to be determined in the light of the specific circumstances and context of each case. I am not therefore persuaded that these examples are directly comparable to the proposal before me and they do not alter my views. I also acknowledge that pre-application advice has been given and that there is some apparent frustration as to how the various proposals and application(s) have been considered and determined in what appears to be a protracted planning history. I also note that a public consultation event was held but ultimately the Council's administration and determination of the application have no bearing on the planning merits of the appeal before me.
19. In reaching this view I have also had regard to the previous appeal decision on the site but note that was for 7 dwellings and the appellant accepted it was inappropriate development. That appeal was also dismissed and the Inspector also found harm to openness and 2 of the 5 purposes. It does not therefore alter my views in relation to the main issues before me. On the evidence before me it is also not determinative that the appellant contends a recent Green Belt review to be flawed because the appeal site before me is within the Green Belt.

Planning balance and conclusion

20. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It goes on to advise that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
21. The other considerations do not clearly outweigh the substantial weight that I give to the harm to the Green Belt, by reason of inappropriateness, the harm to openness and one of the 5 purposes that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. Because this is an application for the provision of housing and the Council cannot demonstrate a 5 year supply, policies which are most important for determining the application are out-of-date⁵. However, there are no very special circumstances and the application of policies in the Framework that protect areas of particular importance provides a clear reason for refusing the development proposed⁶. As such the proposal would not be the sustainable development for which the Framework indicates a presumption in favour.
22. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that a decision should be taken otherwise. Having considered all other matters raised, including some local support for the proposal, I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR

⁵ By virtue of Footnote 7 of paragraph 11 (d) of the Framework.

⁶ Paragraph 11 (d) (i) of the Framework.