



Appeal Decision

Site visit made on 26 November 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2019

Appeal Ref: APP/Y3615/W/19/3234922

Land adjacent to Grandis Cottages, High Street, Ripley Woking GU23 6AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Kris Collett of Castlemere Developments against the decision of Guildford Borough Council.
 - The application Ref 19/P/00038, dated 7 January 2019, was refused by notice dated 11 February 2019.
 - The development proposed is permission in principle for 6 dwelling houses.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding that the application form is dated 10 January 2018, in my heading above I have taken the date of the application from that given on the appeal form as this appears to fit more accurately with the timescales of the application and subsequent decision.
3. Planning Practice Guidance (PPG) explains that permission in principle is an alternative way of obtaining planning consent for housing led development as part of a two stage procedure. Permission in principle, as the initial stage, is limited to the consideration of location, land use and the amount of development which, in the event of an approval, would leave the remaining matters to be considered in a technical details application. The PPG further advises that conditions cannot be attached to the grant of permission in principle and expressly states that planning obligations cannot be secured at the permission in principle stage¹.
4. The appellant refers in his statement to the submitted Design and Access Statement and illustrative layout plan. However, in determining the application I have been mindful that, in the event of an approval of permission in principle, there is no practical mechanism available to require that a subsequent technical details application must accord with illustrative information and that there may be alternative ways of accommodating the proposed development.
5. Since the Council made its determination the Guildford Borough Local Plan: Strategy and Sites 2015-2034 (LP) was adopted on 25 April 2019. Policy P2 supersedes saved policy RE2 of the Guildford Borough Local Plan, January 2003 (2003 LP) in relation to development in the Green Belt, and policy P5

¹ Paragraph 022 Reference ID 58-022-20180615 Revision Date 15.6.18

supersedes saved policy NE1 in relation to development that may impact on the Thames Basin Heath Special Protection Area (TBH SPA). In addition, Policy D1 of the LP relates to place shaping and quality of design which supersedes saved policy G5(1) and G5(6) of the 2003 LP. I consider that the most relevant policies in the recently adopted development plan have broadly similar objectives to those replaced and as such, there have been no fundamental changes insofar as is relevant to the circumstances of this appeal decision. Furthermore, given the advanced stage of preparation of the emerging policies at the time of the decision, both parties have had the opportunity to reference them in their appeal statements. Therefore, I am satisfied that no injustice will result from the change in policy circumstances and I have determined the appeal accordingly.

Main Issues

6. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- The effect of the proposal on the openness of the Green Belt;
- The effect of the proposal on the character and appearance of the area;
- The effect of the proposal on the TBH SPA, and;
- If inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

7. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open as the essential characteristics of Green Belts are their openness and their permanence.
8. New buildings within the Green Belt are inappropriate with the exceptions of the types of development listed in paragraph 145 of the Framework. Policy P2 of the LP states that the construction of new buildings in the Green Belt will constitute inappropriate development, unless the buildings fall within the list of exceptions identified by the Framework. Criterion e) of paragraph 145 allows for limited infilling in villages. It is the appellant's view that the proposal is not inappropriate by virtue of this exception. This requires the consideration of whether (1) the appeal site is within a village, and (2) whether the proposal represents limited infilling. I am referred to caselaw and legal opinion that indicates that this is essentially a question of planning judgement².

² R(Tate) v Northumberland CC [2018] EWCA Civ 1519 and legal opinion of Richard Turney, Landmark Chambers, 7 August 2019, paragraph 15.

9. The appeal site is adjacent to, but outside of the defined settlement boundary for Ripley. However, both parties accept that given the relevant case law³ that this is not necessarily determinative as to whether it is within a village for the purposes of paragraph 145 e). Equally, the plan in the draft Lovelace Neighbourhood Plan provides little basis to suppose that the appeal site is within the village for interpreting paragraph 145 e) given that it indicates Green Belt, ward and parish boundaries on a large scale plan⁴. Moreover, the settlement gateway shown in the extract provided from Volume III (Land surrounding the Villages across the Borough) of the Borough's Green Belt and Countryside Study 2013⁵ does not purport to show a settlement boundary. Similarly, I do not consider that the positions of the village entrance signs adjacent to the road are determinative, rather my assessment primarily turns on the position on the ground and the pattern of the settlement.
10. The appeal site comprises part of a grassed field on the south western edge of Ripley village. When approaching the village from the south west, the row of Grandis cottages signifies the edge of the built up area on the southern side of Portsmouth Road. They denote a palpable change in character from predominantly open countryside into a built area. The position of the former agricultural buildings at Hurst farm, due to their functional rural appearance and distance from Grandis cottages, with intervening open land, do not, in my view, signify the edge of the settlement as they are commensurate with the rural character of the open countryside. In this regard the circumstances of the appeal proposal differ notably from those in the appeal decision in South Staffordshire to which I am referred⁶. In that case, the appeal site already accommodated built form and the gap between it and other buildings was smaller. It therefore attracts little weight.
11. In addition, whilst the residential development of Georgelands opposite the appeal site extends further to the south west, it is well screened by an established hedgerow along the northern side of Portsmouth Road. In this context, this reinforces the appearance of Grandis Cottages as the start of the built up area of the village on the southern side of the road.
12. I am further referred to built form (referred to as the southern part of Ripley by the appellant) further to the south west of the appeal site. I acknowledge that this area includes commercial establishments and may be generally referred to as Ripley. Nevertheless, there is an intervening notable gap free from built form on both sides of Portsmouth Road, which includes the appeal site. As a result, the area to the south west is experienced as a distinct component separate from the main part of the village rather than as part of a continuous settlement.
13. Due to the surrounding pattern of development, my observations lead me to find that the appeal site is not in the village of Ripley but rather is located on its edge. As such, it is not that surprising that it is reasonably proximate to a range of services and facilities. Although I am referred to an appeal case⁷ where the nature of services and facilities were considered, this was in relation to whether the settlement in that case amounted to a village for the purposes of the

³ Julian Wood v SSCLG and Gravesham Borough Council [2015] EWCA Civ 195

⁴ Figure 2, Page 9 Appellant's appeal statement

⁵ Page 38 Appellant's appeal statement

⁶ Appeal reference APP/C3430/W/18/3207145

⁷ Appeal reference APP/R0660/W/17/3170279

Framework. Neither party in the case before me is suggesting that Ripley is not a village, rather the point of dispute is whether the appeal site is in it.

14. The term 'limited infilling' is not defined in the Framework. However, the explanatory text for policy P2⁸ states that for the purposes of the policy "*limited infilling is considered to be the development of a small gap in an otherwise continuous built-up frontage, or the small-scale redevelopment of existing properties within such a frontage. It also includes infilling of small gaps within built development.*" Whilst I acknowledge that the supporting text does not carry the same weight as policy wording, in the absence of a national definition, given the recent adoption of the LP and its supporting text which is consistent with the Framework policy, it is relevant to apply this definition to this case. Therefore, I give it considerable weight.
15. The appeal site represents a significant gap between the dwellings on the southern side of Portsmouth Road and the former agricultural buildings some distance to the south west. To the north east of the appeal site there is a clearly identifiable built-up frontage arising from a line of dwellings with regular plots and set back to the road. From my observations, this built frontage stops at 14 Grandis Cottages with a considerable intervening gap that is devoid of built form. As a result, the detached former agricultural buildings to the south west of the appeal site, even accounting for the mixed use and permitted residential conversion of one of them, read as sporadic rural buildings rather than being part of a built-up frontage or group of buildings in the village. Consequently, the proposed development would not fall within the definition of limited infilling.
16. I am referred to several appeal decisions where Inspectors found, in relation to applications for full planning permission, that the proposals before them constituted limited infilling⁹. The examples at Copthorne Road in Tandridge District and Shalford in Guildford Borough related to proposals within a settlement boundary where development already existed on the appeal site and the surrounding context of development was more concentrated than in the case before me. Moreover, the plot size and layout of the development are not matters that would be established as part of a permission in principle and therefore, only limited weight can be given to the illustrative plan. The example in Higher Poynton related to a considerably smaller development for 2 dwellings. Accordingly, these examples are of limited relevance as direct parallels to the proposal before me, which limits the weight I can give to them. In any event, I have determined the appeal proposal on its own merits.
17. Therefore, I find that the proposal would not constitute limited infilling in a village, and I have not seen evidence that it would fall within any of the other exceptions listed in the Framework. As such it would constitute inappropriate development in the Green Belt to which I must attach substantial weight.

Openness of the Green Belt

18. The appeal site comprises predominantly open grass land with some trees and sections of hedgerows along the boundaries. The introduction of 6 dwellings and their associated parking areas, gardens and domestic paraphernalia onto the site which is devoid of built form, would markedly reduce the openness of the Green Belt. Notwithstanding frontage boundary screening, the dwellings would

⁸ Paragraph 4.3.23

⁹ Appeal references APP/M3645/W/16/3141780; APP/Y3615/A/12/2184747 & APP/R0660/W/18/3201548

require accesses that would make them readily apparent from Portsmouth Road.

19. Reference is made to case law¹⁰ which established that where a development falls within the exceptions in paragraph 145 of the Framework, unless paragraph 145 specifically requires it, an assessment of the impact of the proposed development on the openness of the Green Belt is not thereafter required. However, it will be seen that I have found the proposal would constitute inappropriate development and therefore, an assessment of openness in these circumstances is consistent with the caselaw.
20. Accordingly, the proposal would have an obvious adverse spatial and visual impact on the openness of the Green Belt. However, given the relatively minor scale of the proposal for 6 dwellings, the degree of harm would be moderate.

Character and appearance

21. The appeal site comprises an open, grassed area separating the edge of the village from the former agricultural buildings to the south west, which when combined with the hedgerows and trees along the boundaries results in a spacious rural character. The site plays a notable role in the transition from the built area of the village into open countryside on the southern side of Portsmouth Road. As such, introducing the presence of considerable built form and associated domestic gardens into this area, would considerably diminish the rural spaciousness currently provided by the appeal site.
22. In support of the proposal the appellant points to the continuation of a built form similar to that established by Grandis Cottages in terms of building line, garden depth and plot sizes. However, these are not matters that would be established, or secured as part of a permission in principle and therefore, carry limited weight. In any event, this would fail to overcome the harm from the loss of spaciousness and reduction in rural character arising from the development.
23. The appellant highlights an opportunity to shield views towards the former agricultural buildings at Hurst farm and provide boundary planting to generate a defined edge to the village. Be that as it may, it is not shown that views to the former farm buildings are so harmful that shielding with additional built form would be beneficial. Furthermore, it will be seen from my comments above that I consider the edge of 14 Grandis Cottages already provides a defined edge to the village on the southern side of Portsmouth Road.
24. Therefore, I find that the proposal would harmfully diminish the rural character and appearance of the area and hence, would conflict with policy D1 of the LP which, amongst other matters, requires new development to achieve high quality design that responds to distinctive local character by reinforcing locally distinct patterns of development.

TBH SPA

25. The appeal site is located within 5km of the TBH SPA, a habitat recognised under the Conservation of Habitats and Species Regulations 2017 as being of

¹⁰ Lee Valley Regional Park Authority v Epping Forest District Council, February 2015 – Appellant's Final Comments

international importance for rare and vulnerable species of birds. In this case, the Woodlark, Dartford Warbler and Nightjar.

26. Under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended) (the Order), permission in principle must not be granted for development which is habitats development. The PPG¹¹ defines habitats development as:

- a) Development which is likely to have a significant effect on a qualifying European site or a European offshore marine site, referred to as habitats sites in the National Planning Policy Framework (either alone or in combination with other plans or projects);
- b) is not directly connected with or necessary to the management of the site, and;
- c) the competent authority has not given consent, permission, or other authorisation in accordance with regulation 63 of the Conservation of Habitats Regulations 2017 (the Regulations).

27. Recent caselaw¹² requires the decision maker, when considering the effect that a proposal may have on such a European Site, to consider mitigation within an appropriate assessment rather than at screening stage. Accordingly, where development is likely to have a significant effect on a qualifying European Site without any mitigating measures in place, it is necessary that an appropriate assessment should be undertaken before the consideration of the grant of permission in principle.

28. In the absence of mitigation measures and using a precautionary approach, given the proximity to the TBH SPA it is reasonable to suppose that future residents of the development would potentially visit the Site for recreational purposes and dog-walking. Intensification of such activities would be likely to cause disturbance to the birds and their habitat. Notwithstanding that the future number of residents generated by the appeal proposal would be relatively low, I am required to consider the effect of the proposal both individually and in combination with other projects. As such, there is a risk of a significant effect on the internationally important interest features of the TBH SPA, and I have not seen evidence to suggest otherwise.

29. The Thames Basin Heaths Special Protection Area Avoidance Strategy Supplementary Planning Document, 2017 (SPA SPD) and Guildford Borough Council's Planning Contributions Supplementary Planning Document, 2017 (PC SPD) set out the Council's approach, as broadly agreed with Natural England, to avoid harm to the heathlands arising from additional residential development through two main avoidance measures. This includes the provision of Suitable Alternative Natural Greenspace (SANG) to provide recreational space away from the Site, and Strategic Access Management and Monitoring (SAMM). The SAMM includes education, wardens, seasonal campaigns and guidance on the management of the TBH SPA and SANGs. These avoidance measures are funded by contributions normally secured by a legal agreement, with proportionate rates set out in the PC SPD.

¹¹ Paragraph 005 Reference ID 58-005-20190315 Revision date 15.3.19

¹² People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

30. The appellant has submitted a signed and dated Unilateral Undertaking (UU) that would provide a financial contribution of £52,932.84 towards the costs of providing SANG and SAMM within the Borough prior to the commencement of development. I have been provided with a legal opinion¹³ which states that notwithstanding national guidance stating that planning obligations cannot be secured at the permission in principle stage, there is no legal impediment to the appellant entering into an obligation under section 106 of the Town and Country Planning Act 1990. I have not seen evidence to show that the Town and Country Planning (Permission in Principle) Order 2017 (as amended) expressly prohibits an applicant from entering into such an obligation.
31. Moreover, the wording in the PPG, is in response to the question "*Can Local Authorities agree planning obligations at the permission in principle and technical details consent stages?*". The guidance is likely to reflect the Government's general intention that, where obligations are, or likely to be required, these should normally be secured at the technical details stage rather than the initial permission in principle stage. It does not expressly refer to Unilateral Undertakings.
32. Furthermore, I am mindful of the specific PPG guidance¹⁴ in relation to sites that have been subject to a habitats assessment stating that "*If the local planning authority is satisfied, after taking account of mitigation measures in the appropriate assessment and concluding that the development will not adversely affects[sic] the integrity of the protected site, then, subject to compliance with other statutory requirements regarding the permission in principle process, it can grant permission in principle.*" This suggests that the national guidance envisages that it would be possible in some circumstances to grant permission in principle for such sites. It also follows that given that the risk of a significant effect on the Site would arise from the location, land use and the amount of development which are under consideration at the planning in principle stage, then I must be satisfied prior to the grant of any such permission that the development would not adversely affect the integrity of the protected site and therefore, it is not a matter that can be left to a later stage. As such, in these circumstances, the evidence leads me to take account of the submitted UU.
33. However, as Regulation 63(1) of the Regulations states that a competent authority must make an appropriate assessment before deciding to undertake, or give consent, permission or other authorisation for a plan or project which is likely to have a significant effect on a European site, it need only be carried out if it was otherwise likely that permission in principle would be granted.
34. Furthermore, I have some concerns about the UU document itself, its execution and thus whether the Council could rely on it to secure the contributions. For example, it is not clear from the document whether all the persons with an interest in the land are properly identified and therefore, whether they are all signatories. In addition, although there is reference to an attached plan¹⁵, there was no such plan identifying the land in the UU before me.
35. The financial contribution in the UU is given as a specific sum, notwithstanding that the PC SPD provides for proportionate rates depending on bedroom

¹³ Richard Turney, Landmark Chambers, 7 August 2019

¹⁴ Paragraph 005 Reference ID 58-005-20190315 Revision date 15.3.19

¹⁵Page 2 Clause 1.1

numbers. As the bedroom numbers is not a matter determined as part of a planning in principle application, this approach within the UU is too inflexible and therefore, risks not providing for the requisite or proportionate obligations for the development.

36. In addition, the evidence before me does not clearly show that a sufficient quantity and quality of SANG land is available to cater for the consequent increase in population arising from the development and the specific mitigation works and SANG are not identified. Although the financial contributions would be made prior to the commencement of the development, given that the Council is not a party to the obligation, there is little before me to provide certainty as to whether the mitigation measures would be functional in advance of the occupation of the proposed development. The Council has not undertaken to be bound by Clause 4.2 which purports to require it not to use the contribution other than for the purposes for which it was paid. Accordingly, uncertainty remains as to whether the obligation would provide suitable avoidance measures that would be secured in time to mitigate for the proposal.
37. However, I have not returned to the main parties in order to request further information and assurance regarding the mitigation measures, nor sought the views of the Statutory Nature Conservation body as part of an appropriate assessment as this would not change the outcome of my decision overall, given that I have other substantive concerns regarding the appeal proposal set out in my reasoning above. Nonetheless, as it stands, and for the reasons outlined, I am not satisfied that the submitted UU would make adequate provision to mitigate the significant adverse effect on the TBH SPA.
38. It therefore follows that the development falls within the definition of habitats development under Paragraph 5B (1)(b) of the Order for which permission in principle may not be granted. Therefore, it would conflict with policy P5 of the LP and saved policy NRM6 of the South East Plan which, amongst other matters, seeks to prevent development which would give rise to adverse effects on the TBH SPA. Additionally, it would run counter to saved policy NE4 of the 2003 LP which seeks to prevent harm to protected species.

Other Considerations

39. The development would contribute six dwellings towards the overall housing supply. This benefit, when combined with the economic benefits associated with the construction and future activity of the occupants of such a development, attracts moderate weight in favour of the proposal.

Green Belt balancing exercise

40. Paragraph 144 of the Framework advises that substantial weight should be given to any harm to the Green Belt. Moreover, very special circumstances to allow inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In this case, the proposal amounts to inappropriate development, and moderate harm would be caused to the openness of the Green Belt. These factors attract substantial weight. In addition, significant weight is given to the harm that would result to the character and appearance of the area.

41. Irrespective of the impact of the proposal on the TBH SPA, the other considerations in this case do not clearly outweigh the harm identified in relation to the Green Belt and character and appearance. It follows that, when substantial weight is also given to the harm that would arise to the integrity of the TBH SPA, this would remain the case. Consequently, the very special circumstances necessary to justify the development do not exist. Therefore, the proposal would be contrary to the Framework and to policy P2 of the LP which primarily seeks to protect the Green Belt from inappropriate development.
42. Furthermore, the development falls within the definition of habitats development under Paragraph 5B (1)(b) of the Order for which permission in principle may not be granted.

Conclusion

43. For the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector