
Appeal Decision

Site visit made on 10 September 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/Q3630/W/19/3230408

Bellbourne Nursery, Hurst Lane, Egham TW20 8QJ

- 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 Gemco Properties Ltd against the decision of Runnymede Borough Council.
 - The application Ref RU.18/1371, dated 14 March 2019, was refused by notice dated 29 March 2019
 - The development proposed is demolition of existing building and erection of up to 5 dwellings with associated residential curtilages, garages, car parking spaces and a new access road.
-

Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. I have taken the description of development in the banner header above from the application form. While different from that given on the decision notice and appeal form, there has been no confirmation provided that any change was agreed.
3. Outline planning permission is sought with the matters of access, scale and layout to be determined. Matters of appearance and landscaping are reserved for subsequent consideration.
4. The National Planning Policy Framework (Framework) refers to the weight that should be given to relevant policies in emerging plans (paragraph 48). While submitted for examination, I am not aware of any unresolved objections or the exact stage The Runnymede Local Plan (emerging plan), has reached. Therefore, it carries limited weight.
5. The site comprises the main building and a surrounding yard that were subject to a Certificate of Lawfulness of Existing Use or Development (CLEUD), for a use falling within Class B8 (RU.11/0275). At my visit I saw external storage and parking of vehicles, including HGV's around, and associated with, the main building. In addition, there are hardstanding areas. Other structures, including storage containers and office cabins, are spread across the appeal site. During the course of the appeal seven of these have received a separate recent CLEUD (RU.19/0861). The Council have commented on the effect of the second certificate on the merits of the appeal scheme. I have considered the scheme on this basis.

6. While a third party has indicated that the site is within a Conservation Area, the Council have stated otherwise.

Main Issues

7. The main issues of the appeal are:
- The effect of the development on the Thames Basin Heaths Special Protection Area (SPA);
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - The effect of the proposal on the character and appearance of the area; and
 - The effect of the proposal on the provision of storage and distribution premises.

Reasons

Thames Basin Heaths Special Protection Area (SPA)

8. The site falls within 5 km of the SPA. The SPA comprises an area of lowland heath and woodland supporting a characteristic landscape and distinctive flora and fauna under threat and in decline. It is designated because of the presence of breeding populations of three bird species: Dartford Warblers, Woodlarks and Nightjars. These birds nest on or near the ground and as a result they are very susceptible to predation of adults, chicks and eggs (particularly by cats, rats and crows) and to disturbance from informal recreational use, especially walking and dog walking.
9. The proposal would lead to additional dwellings. There is a reasonable likelihood that the SPA would be accessed for recreational purposes by future occupiers of the development. Although small in itself, this may lead to the harmful disturbance of the habitat of birds and is likely to have a significant adverse effect on the integrity of the SPA, when considered in combination with other residential development in the surrounding area.
10. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that an Appropriate Assessment is carried out. The Habitats Regulations also indicate that permission may only be granted after having ascertained that a scheme will not affect the integrity of the European site. I may give consideration to any conditions or other restrictions which could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the site.
11. I have sought further evidence on this matter from the Council, the appellant, and Natural England (NE) was consulted in the course of the appeal. I have undertaken this assessment on a proportionate basis and adopting a precautionary approach.
12. The information before me, including the Thames Basin Heaths Special Protection Area Supplementary Planning Guidance (SPG), indicates NE considers that the impact of such development on the natural habitats in the SPA can be managed, in combination with on-site access measures, by the provision of enhancements to Suitable Alternative Natural Green Space (SANGS).

13. Natural England has commented that providing contributions are secured through a legal agreement to SANGS and Strategic Access Management and Monitoring (SAMM) in line with the requirements of Runnymede's Avoidance and Mitigation Strategy (strategy) is followed they are satisfied that the mitigation would ensure that there are no impacts to the European site.
14. The appellant has provided a unilateral undertaking (UU) that would provide financial contributions for the provision of SANGS within the borough in accordance with the SPG. It would also fund access management at the SPA and monitoring the effects of mitigation measures across the SPA. These contributions are calculated with reference to the SPG.
15. The Council has not disputed the form, wording or level of contribution given in the UU. Nevertheless, I need to be convinced that the payment would be used for its intended purpose and directly mitigate the impacts of the appeal scheme. The UU does not stipulate which SANG within the borough that the contribution would be allocated for and how it would be spent. Furthermore, while it has been put to me that there is sufficient capacity within the Council's own SANGS to mitigate any harm from the appeal proposal, I have no clear and up to date details regarding the condition or capacity of the SANGS within the borough.
16. As such, I cannot be certain that the contribution would ensure that there was alternative green space of appropriate quality and as conveniently located to the appeal site as the SPA. Moreover, there is no indication of how the SAMM contribution would specifically address the impacts from the proposed development.
17. The use of conditions to secure a scheme for mitigation has been referred to. Nevertheless, there is insufficient information to demonstrate that conditions are an appropriate mechanism of securing this, and that they would meet the requisite tests in Planning Policy Guidance (PPG).
18. Accordingly, I am not satisfied that appropriate mitigation has been secured. The evidence before me indicates that there is potential for recreational disturbance to the SPA through additional activity associated with the proposed development, which has the potential to affect the integrity of the SPA.
19. Where suitable mitigation cannot be secured the Habitats regulations state that planning permission should only be granted if there are no alternative solutions, that there are reasons of overriding public interest and suitable compensatory measures are secured. There is no compelling evidence to indicate that the appeal proposal is the only solution for such a scheme. Based on the individual merits of the case, the provision of 5 dwellings is not sufficient to amount to imperative reasons of overriding public interest. Finally, no compensatory measures have been put forward.
20. Consequently, having regard to the Habitat Regulations, permission should not be granted. The proposed development could result in harm to the integrity of the SPA and conflict with the Habitats Regulations, saved Policies NE16 of the Runnymede Borough Local Plan Second Alteration 2001 (LP) and NRM6 of the South East Plan Regional Spatial Strategy for the South East, the SPG and the policies of the Framework.

Whether Inappropriate Development

21. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open (paragraph 133). It outlines that the construction of new buildings, other than in connection with a small number of exceptions set out in paragraphs 145 and 146, should be regarded as inappropriate in the Green Belt.
22. One exception is the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development; or not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
23. Saved Policy GB1 of the LP states that there will be a strong presumption against development that would conflict with the purposes of the green belt or adversely affect its open character.
24. The Framework defines previously developed land as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.
25. In light of the certificates of lawfulness already in place at the appeal site, the information before me and my observations on site, I consider the site to be previously developed land.
26. The next consideration is whether the development would have a greater impact on the openness of the Green Belt than the existing development. The Framework indicates that openness is an essential characteristic of the Green Belt (paragraph 133). Case law has established that openness has a visual aspect and spatial aspect.
27. Since the previous appeal at the site¹, CLEUD RU.19/0861 has confirmed that there are now lawful permanent structures that are located away from the main building. Although they are of a smaller scale, these nevertheless mean that the development is spread across the site. The building and structures at the site have an industrial appearance in contrast to the horticultural appearance of the glasshouses to the north.
28. The maximum height of the proposed dwellings would be higher, than the existing built form on the site. Details provided during the application showed the dwellings would increase the footprint and volume of built form when compared to the existing warehouse building. Nonetheless, while the certificate related to 10 structures, the lawfulness of 7 structures was confirmed in RU.19/0861. This has subsequently increased the overall footprint and volume of development at the site which benefits from the lawful development certificates.
29. The proposed scheme would have a smaller footprint and volume than that currently on site with lawful certificates and subject to the certificates of

¹ APP/Q3630/W/18/3206959

lawfulness. Therefore, spatially the scheme would not result in greater impacts on the Green Belt than the appeal site at present.

30. The parking of vehicles and outside storage at the site would be transient and could reduce in the future. However, there has been no compelling evidence to indicate that this is likely to occur or that there are any restrictions preventing an increase in the level or location of outside storage and parking at the site. On the basis of the individual circumstances of this appeal, while not permanent features, due to the spread of these features across the site and their visibility over the existing boundary features from certain directions, the bulk of the containers, parked HGVs and outside storage have a significant effect on the openness of the Green Belt.
31. The proposed dwellings would be permanent features at the site and would go beyond the footprint of the existing main building. Notwithstanding this, there are other structure on the site. In addition, while there would be domestic paraphernalia associated with them, the spread of the dwellings would be more restricted and concentrated centrally in the site than the existing development. Furthermore, a landscaped area to one end would be likely to result in significantly less built form on that part of the site than at present. These visual changes would be evident from the adjacent properties, the lane at the access to the site and the glimpsed views from the public right of way to the north.
32. The proposal would include a new road, turning and parking areas. Nonetheless, these aspects of the scheme would have no greater effect on the openness of the Green Belt than the existing hardstanding areas and parked vehicles.
33. Planning Policy Guidance (PPG) states that the degree of activity likely to be generated, such as traffic generation, can be taken into account when considering the potential impact of development on the openness of the Green Belt. The proposed scheme would reduce both the number and type of vehicle movements.
34. Therefore, on the basis of the details before me, the scheme would not have a greater impact on the openness of the Green Belt than the existing development than the existing circumstances. As such, it would not be inappropriate development in the Green Belt having regard to the Framework and would not adversely impact on the purposes of the Green Belt. Consequently, there is no requirement to demonstrate very special circumstances exist. It would accord with saved Policy GB1 of the LP where it seeks to prevent development that would adversely affect its open character and its purposes.

Character and Appearance

35. From my observations during my site visit, I saw that the layout of the development would be in more regularised plots than the immediately adjacent properties and that there are examples of sporadically dispersed development nearby. No precise details of the sizes of existing dwellings, their plots or separation distances in the area have been provided by any party. Notwithstanding this, there is variation to the plot layouts and the bulk and mass of dwellings in the area. There are formal layouts with rows of properties and dwellings that fill much of the width of their plots along Stroude Road and Luddington Avenue nearby.

36. The previous Inspector considered that the existing development, including the outside storage and parking of HGVs, resulted in an unattractive appearance to the site that harmed the intrinsic character and beauty of the landscape. I have reached the same conclusion. Unlike the horticultural design of the adjacent glass houses that you may expect to see in such locations, the site and the warehouse have a commercial/industrial appearance. Whilst an alternative development to that proposed could come forward, I must consider the appeal on the basis of the scheme before me. The introduction of dwellings, gardens and a sizeable landscaped area would improve the visual appearance of the site. Furthermore, whilst the principle of the layout is considered, detailed matters of landscaping and appearance are reserved matters.
37. The layout and scale of the proposal would not be detrimental to the character and appearance of the area. It would be consistent with the requirements of saved Policy HO9 of the LP. The scheme would also accord with the Framework where it aims to prevent poor design that fails to take the opportunities available for improving the character and quality of an area.

Provision of storage and distribution premises

38. Redevelopment of the appeal site would result in the loss of accommodation for storage and distribution uses and the site is identified in the Employment Land Review 2016. While the Council do not refer to any specific adopted plan policy in their refusal reasons, my attention has been drawn to emerging plan policy IE3. This seeks to protect storage and distribution uses.
39. The loss of the appeal site for storage and distribution use would count against the proposed development. However, given the status of the emerging plan, and that from the details before the supporting text of Policy IE3 only seeks to protect units of 500sqm or below, which this site is not, this attracts modest weight.

Other Matters

40. My attention has been drawn to appeal decisions and case law by parties. However, I do not have the full details of these schemes and cases. The previous appeal at this site was for a greater number of dwellings while other cases relate to schemes of a different size, location, and/or type of development. Therefore, they are materially different to the proposal before me. In any event, I have assessed the scheme on its own merits.
41. National policy acknowledges that small-scale developments can make an important contribution to meeting the housing requirement, be built out quickly and encourages the re-use of brownfield sites. Even if I were to agree with the appellant that there was a substantial shortfall in housing supply, being for 5 dwellings the contribution to the supply and mix of housing in the borough would be modest.
42. Economic benefits resulting from the construction period and spending of future occupiers along with environmental benefits from any biodiversity enhancement, would be limited. The scheme would improve the living conditions of the occupiers of the nearby properties with changes to the type and amount of traffic as well as the nature of activities at the site. There would also be benefits in terms of the visual appearance of the site.

43. The Council accept that they do not have an up-to-date 5 year housing land supply. However, the Framework indicates that the presumption in favour of sustainable development does not apply where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The SPA is an example of such an area/asset and the proposal is contrary to the relevant policies of the Framework in regard to these.

Conclusion

44. I have determined the proposal in line with the development plan. The scheme would be contrary to the relevant development plan policies with regard to the effect on the SPA. The development plan approach to this matter is supported by the policies of the Framework. There are no material considerations whether taken individually or collectively that outweigh this conflict.
45. For the reason given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR