



Appeal Decision

Hearing Held on 20 November 2019

Site visit made on 20 November 2019

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2020

Appeal Ref: APP/X0415/W/19/3233363

Hentucks Farm, Deadhearn Lane, Chalfont St Giles HP8 4HG

- 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 Paul Higgs, Millbank Homes (Chalfont) Limited against the decision of Chiltern District Council.
 - The application Ref CH/2017/1957/FA, dated 19 October 2017, was refused by notice dated 17 January 2019.
 - The development proposed is the demolition of existing buildings and erection of 3 detached houses with associated car barn and alterations to existing site access.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of 3 detached houses with associated car barn and alterations to existing site access at Hentucks Farm, Deadhearn Lane, Chalfont St Giles HP8 4HG in accordance with the terms of the application, Ref CH/2017/1957/FA, dated 19 October 2017, subject to the conditions in the attached Schedule.

Procedural Matter

2. The Council's second reason for refusal referred to the lack of a financial contribution towards affordable housing. At the hearing, a completed Unilateral Undertaking (UU) was submitted, securing the provision of the required contribution. The Council confirmed at the hearing that it was content that this UU was complete and addressed the reason for refusal. I agree. As such, this matter is not referred to as a main issue below.

Main Issues

3. The main parties agree that the proposal would be inappropriate development in the Green Belt, as defined within the National Planning Policy Framework (the Framework). Based on what I have seen I have no reason to find otherwise. Accordingly, the main issues in this case are the effect of the proposal on openness and whether or not the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Openness

4. The site is a former agricultural complex, comprising of numerous buildings arranged throughout. I observed many of these buildings to be substantial, whilst there were also a variety of more modest structures present. At the time of the submission of the application, the buildings provided a total of 4748 cubic metres (m³) of built form with a further 375m³ provided by other miscellaneous structures. It was agreed that since the planning application was submitted that a number of the buildings have been removed from the site. Following this, the remaining existing buildings provide 4401m³ of built form, with 271m³ of miscellaneous structures.
5. The proposed scheme would provide four buildings, comprising three dwellings and a garage barn, which would have a combined volume of 2576.6m³. This would result in an approximately 45% reduction in the built form, compared to that which currently exists. The Council, in its officer's report, acknowledges that the reduced footprint of the proposed development would have a positive impact on the openness of the Green Belt. There would also be an approximately 40% reduction in the amount of hardstanding in the site. Whilst the hardstanding would have a limited effect on openness, the reduction would nonetheless diminish the developed appearance of the site.
6. Based on the above, I find that there would be a substantial reduction in the quantum of built form at the site which would result in a significant improvement to the openness of the Green Belt at this location.

Other considerations

7. The appellant cites that there is a lack of viable alternative uses for the site. As part of the appeal, information has been submitted in respect of any possible viable re-use of the site. This considered re-instituting an agricultural use, as well as an equestrian use and the potential for an alpaca farm. The appellant contends that there are a number of factors which would prevent the successful future use of the site and these include the presence of ground contamination, which has been confirmed as originating from the previous agricultural use of the site, the size of the holding extends only to 1.8 hectares which necessitates an intensive form of agriculture reliant on production within buildings rather than from the land. Additionally, it is contended that the existing buildings present on site were purpose-built for battery egg production and as a consequence are not suitable for other forms of agricultural use.
8. It is further asserted that in order to facilitate a future intensive agricultural operation on the site, a significant amount of investment would be required in order to provide new buildings. It has previously been suggested that an alpaca farm could be established on the site. However, it is highlighted by the appellant that the appeal site is too small and the example that was provided as a comparable, was only made viable by the inclusion of a visitor attraction. As such, this option is also discounted. The Council has not sought to counter the information that has been provided in this regard and provides no evidence to the contrary. Whilst the Council did highlight that there is no evidence of marketing of the site or offers to rent the land, based on the information as I set out above, together with the length of time since an agricultural operation ceased at the site, I consider that it has been sufficiently demonstrated that

the future use of the site for an agricultural, or associated use, would not be viable. The lack of a viable alternative use of the site is a matter which I consider attracts moderate weight.

9. Reference is made to the condition and appearance of the existing buildings on the site and that, in the absence of a viable use, they will remain and continue to detract from the character and appearance of the area. I was able to observe that the majority of buildings are in a poor state of repair, as well as the areas surrounding the buildings also having been utilised for the deposition of various materials. As such, the site has a distinctly unkempt appearance. However, I am conscious that the site has deteriorated into its current state due to the lack of use. There would, in my view, be other methods of improving the appearance other than necessitating its redevelopment through dwellings. Thus, whilst I agree that there would be an improvement to the visual appearance of the site, I accord this matter only limited weight.
10. It has also been contended that the principle of residential development on site could be secured by the conversion of a number of the existing buildings. The appellant states that this would however not be a preferable option, as the benefits to openness and the visual appearance of the site would not be as great as those that would result from the current appeal scheme. I am particularly conscious that no application has been made to the Council in respect of the conversion of the existing buildings and as such it has not been established which buildings, if any, could be converted. Moreover, there is no information before me in respect of the possible layout of the site. At this time, the potential for there to be the conversion of existing buildings is theoretical only and I have no information before me to demonstrate that a conversion scheme is possible or likely. Consequently, this matter carries little weight in favour of the proposal.
11. The appellant contends that the proposal would represent an innovative design solution. The Framework advises at paragraph 131, that great weight should be given to innovative designs which promote high levels of sustainability, so long as they fit in with the overall form and layout of their surroundings. The proposed scheme seeks to reflect the character of the buildings that currently occupy the site and has been designed in such a way as to replicate their siting. As the existing structures have been present on site for a considerable time and are part of the pattern of development in the area, which also includes nearby dwellings, the proposal would fit in with the form and layout of the surroundings. The design idiom of replicating the form of the existing agricultural buildings, including silos, that are within the site currently is, in my view, an innovative approach to the design of the development.
12. It is also highlighted by the appellant that the units have been designed to meet or exceed standards in respect of the reduction in carbon dioxide emissions through sustainable design, construction and renewable energy technologies. This includes high performing insulation, the use of air source heat pumps and improved air tightness over Building Regulation standards. This demonstrates that the scheme would also promote high levels of sustainability. Consequently, great weight should be attached to this, as advised by the Framework.
13. As discussed above, in respect of openness, the proposal would result in a reduction in built form and hardstanding present within the site. The layout of

the development would also improve visual permeability through the site, although the benefit in this particular respect would be tempered, due to the restricted public views into and through the site currently. Nonetheless, I accord this improvement to openness, moderate weight.

14. A number of environmental improvements have been put forward as part of the scheme, including the removal of soil contamination within the site, as well as an improvement to biodiversity. It is acknowledged that the contamination is the result of previous agricultural use of the land, rather than from any of the unauthorised uses that have taken place at the site in the past. The remediation of such contamination would likely be necessary in order to accommodate a future use of the site. The improvements to biodiversity would also be a benefit of the proposed scheme. These matters are therefore accorded moderate weight. The removal of Japanese Knotweed as well as the removal of existing structures, some of which contain asbestos, whilst preferable, could be achieved by other means and as such attract only minimal weight in favour of the scheme.
15. The site is located within the Chilterns Area of Outstanding Natural Beauty (AONB). The appellant emphasises that paragraph 172 of the Framework indicates that great weight should be given to conserving and enhancing landscape and scenic beauty in, inter alia, Areas of Outstanding Natural Beauty. The parties agree that the proposed development would have a positive impact on the appearance of the locality and views within the AONB. This would partly be brought about by the implementation of a comprehensive landscaping scheme within the proposed development. I concur that there would be a positive effect in this regard and thus, this matter attracts great weight in favour of the proposal.
16. The scheme does not include the provision of fences between the residential plots and any residential paraphernalia that may be present would be screened to some degree by the inclusion of earth mounds, landscaping and rockery berms together with woodland planting. Whilst this is acknowledged, this would only mitigate the appearance of the development and would not be necessary in the absence of the proposed scheme for dwellings. As such, I consider these matters to be neutral factors in consideration of the appeal. It has also been contended that the scheme would not set a precedent for other, similar development. I agree that each case should be considered on its merits, in light of the specific circumstances of that case. However, this is also a neutral factor and does not lend weight to the proposal.
17. The Council state that the circumstances of this site could be replicated on other sites and are not unique. However, whilst rarity can be a factor, other considerations are not required to be unique in order to be special. That the circumstance could, in theory, be found in relation to other sites is not a negative factor.
18. Following the submission of the completed UU, the scheme would deliver a contribution towards affordable housing. I am satisfied that the UU accords with the planning obligation tests as laid out in paragraph 56 of the Framework and Regulation 122 of the CIL Regulations. As the contribution would only be delivered should the scheme come forward, this matter is a benefit of the scheme. Given the scale of the contribution, I accord this benefit limited weight.

19. There was discussion at the hearing in respect of the accessibility of the site and the ability of occupants of the proposed development to walk to services. The access to the site would not be served by any pedestrian footways and I acknowledge that there are existing dwellings nearby which similarly are not served by any footways. However, the introduction of further dwellings without good pedestrian access to services is, in my view, not to be encouraged. I note the appellant highlighted that there is the opportunity for pedestrians to take refuge in existing driveways when meeting cars and that the lack of footways was part of the character of the semi-rural location. This tempers the extent of the harm that would result in this regard. Nonetheless, the harm in respect of the lack of pedestrian accessibility is a matter to which I attribute moderate weight.

Other Matters

20. The Council have raised concern that the re-use of the site for agricultural purposes has not been demonstrated, nor that the current agricultural use is defunct. I observed that the majority of buildings within the site were in a poor state of repair and consider it unlikely that any future agricultural use would come forward without significant financial investment. In any event, there is no policy requirement to demonstrate that the existing use is no longer continuing. As such, this matter has little bearing on my decision.
21. At the hearing, the Council provided a copy of policy GB16 of the Chiltern District Local Plan, adopted 1 September 1997 (including alterations adopted 29 May 2001), Consolidated September 2007 and November 2011, which it considered to be indirectly relevant to the appeal. However, this policy specifically refers to the extension of existing residential curtilages, which is not the case in this instance. As such, I do not consider this policy is relevant to my consideration of the proposals.
22. I was also provided with a copy of a previous Inspector's decision¹ at the site. However, that decision was made in respect of an Enforcement Notice served on predominantly commercial uses. I acknowledge that the Inspector in that case found that the considerations were not sufficient to establish very special circumstances. I have however considered the totality of the other considerations in the case that is before me, which considered on their merits, distinguish this current scheme from that which was previously enforced against.

Green Belt Balance

23. The proposal would be inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework establishes that substantial weight should be given to any harm to the Green Belt. 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.
24. The harm by reason of inappropriateness, together with the harm in respect of the lack of pedestrian accessibility, carry significant weight against the proposal.

¹ T/APP/X0415/C/99/1022280

25. I have identified above that there are numerous factors which weigh in favour of the proposal and I have attributed weight to each. Whilst the matters individually carry minimal, limited, moderate or great weight, when considered together I find these considerations persuasive. Collectively, I accord substantial and decisive weight to the other considerations which support the proposal. There would also be an improvement to openness. Overall, I find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.
26. The Council is currently unable to demonstrate a five-year supply of deliverable housing sites; it was stated at the hearing that the Council currently has a 3.69-year supply. The Framework, at paragraph 11 is clear that in such circumstances, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Land designated as Green Belt is included within the list of policies that protect areas or assets of particular importance and which provide a clear reason for refusing the proposed development. The proposal would be inappropriate development, but I have found that the very special circumstances necessary to justify the development exist. Thus, the Framework, as a material consideration, does not provide a clear reason for refusing the development. Consequently, the presumption in favour of sustainable development, as envisaged by paragraph 11, applies in this case. As I find above, the adverse impacts of the proposal do not significantly and demonstrably outweigh the benefits.
27. I note that Policy GB2 of the Chiltern District Local Plan, adopted 1 September 1997 (including alterations adopted 29 May 2001), Consolidated September 2007 and November 2011) only allows development within the Green Belt subject to a number of stated criteria. There is no reference to very special circumstances justifying inappropriate development. As such, I consider this policy to be inconsistent with the Framework. This inconsistency tempers the weight that I attach to this policy. I accord substantial weight to the policy of the Framework and in this instance consider that it indicates a decision other than in accordance with the development plan

Conditions

28. A list of draft conditions was provided prior to the hearing and as set out in the Council's Statement of Case. Additional suggested conditions were also set out in the Appellant's Statement of Case and provided after the hearing. There was a discussion on the suggested conditions at the hearing. I have considered the conditions in light of the advice of the Planning Practice Guidance and the six tests.
29. I have imposed a condition in relation to the commencement of development and in the interests of clarity a condition to ensure compliance with the submitted plans.
30. In order to ensure that the development has a satisfactory external appearance and to protect the appearance of the AONB, I have also imposed a materials condition, which is to include details of roofing materials and hard landscaping. A condition is also required in respect of means of enclosure within the site. Rather than being pre-commencement conditions, I consider that such details can be agreed prior to above ground works taking place. For the same reason,

I have imposed a condition requiring details of all site levels to be agreed. This however needs to be a pre-commencement condition.

31. In order to safeguard the appearance of the AONB and deliver biodiversity improvements, a condition is required in respect of landscaping and the delivery of biodiversity features. It was agreed at the hearing that such details could be agreed prior to the occupation of the dwellings. A condition is also required in respect of the implementation of these details.
32. In order to ensure that established trees and hedging within the site is protected, in the interests of protecting the character and appearance of the countryside, a condition is required to ensure the development is carried out in accordance with the arboricultural report. In the interests of protecting the health of future occupiers, conditions are required to ensure contamination present within the site is adequately dealt with.
33. In the interests of highway safety, a condition is required in respect of the laying out of the vehicular access to the highway and provision of visibility splays, as well as in respect of the provision of parking within the site. So that the openness of the Green Belt is safeguarded, conditions are also necessary preventing the erection of fences, walls and buildings in the future. A condition is also necessary preventing domestic paraphernalia outside of residential curtilages. I consider the situation of this case comprises the exceptional circumstances necessary to justify such restrictions.

Conclusion

34. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nick Sutton

Maven Planning

Alistair Field

Reading Agricultural Consultants

FOR THE COUNCIL:

Emma Showan

Senior Planning Officer, Chiltern
District Council

Melanie Beech

Principal Planning Officer, Chiltern
District Council

DOCUMENTS

- 1 Chiltern District Council and South Bucks District Council – Housing and Economic Land Availability Assessment (HELAA), June 2019
- 2 Copy of Policy GB16.
- 3 Appeal Decision T/APP/X0415/C/99/1022280
- 4 Additional condition – email dated 21 November 2019

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

1603-100-00	Site Location Plan
1603-100-01, Rev PL1	Existing Site Plan
1603-100-02	Existing Aerial View of Site
1603-100-03	Existing Site Photographs
1603-100-04	Existing Elevations AA, BB and CC
1603-100-05	Existing Elevations DD, EE and FF
1603-101-01-PL1	Proposed Site Location Plan
1603-101-02A	Proposed Site Entrance Plan
1603-101-02-PL1	Proposed Site Plan
1603-101-03	Proposed House 1 Plans & Sections
1603-101-04	Proposed House 1 Elevations
1603-101-05	Proposed House 2 Plans and Sections
1603-101-06	Proposed House 2 Elevations
1603-101-07, Rev PL1	Proposed House 3 Plans and Sections
1603-101-08, Rev PL1	Proposed House 3 Elevations
1603-101-09	Proposed Garage Barn, Parking Plan and Proposed Elevations
1603-102-01	Proposed Main Entrance View CGI and Existing View
1603-102-02	Proposed House 1 CGI and Existing View
1603-102-03	House 1 Existing and Proposed East Elevation
1603-102-04	House 1 Existing and Proposed West Elevations
1603-102-05	House 1 Existing and Proposed South Elevations
1603-102-06	Proposed House 1 Cross Section BB and North Elevation
1603-102-07	Proposed House 2 CGI and Existing View
1603-102-08	House 2 Existing and Proposed South Elevations
1603-102-09	House 2 Existing and Proposed East Elevations
1603-102-10	Proposed House 3 CGI and Existing View
1603-102-11, Rev PL1	House 3 Existing and Proposed West Elevation
1603-102-12, Rev PL1	House 3 Existing and Proposed South Elevations
1603-102-13, Rev PL1	House 3 Existing and Proposed North Elevation
1603-102-14	Garage Barn Existing and Proposed Elevations
1603-600-01, Rev PL1	Area and Built Volume Schedule
- 3) No above ground level development shall take place until full details of all external facing materials and roofing materials, together with any hard

landscaping, have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.

- 4) Prior to the commencement of any works on site, detailed plans, including cross section as appropriate, showing the existing ground levels and the proposed slab and finished floor levels of the dwellings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed datum point, located outside the application site. Thereafter the development shall not be constructed other than as approved in relation to the fixed datum point.
- 5) No above ground level development shall take place until full details of the means of enclosure to be retained or erected as part of the development shall be submitted to and approved in writing by the Local Planning Authority. The boundaries shall then be erected and retained in accordance with the approved details.
- 6) There shall be no occupation of any dwelling hereby approved until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. The landscaping scheme shall incorporate biodiversity features including the provision of artificial bird features incorporated into the fabric of the buildings and on trees on site.
- 7) All planting, seeding or turfing, as well as biodiversity features, comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 8) The development hereby approved shall be implemented in accordance with the tree and hedge protection measures described in the Arboricultural Method Statement in sections 15.0-29.0 of the arboricultural report dated 28th September 2017 Ref CC/648 AR3516 and the Tree Protection Plan dated 28.09.2017 Ref TPP-CC/648 AR3516 by Chalice Consulting Ltd. This shall include the erection of tree protection fencing in accordance with the Tree Protection Plan.
- 9) Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
 - i) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.

- ii) A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site. This should include an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, pests, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments.
 - iii) The site investigation results and the detailed risk assessment (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (iii) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.
- 10) Following completion of measures identified in the approved remediation scheme and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the Local Planning Authority for approval. The monitoring and maintenance programme shall be implemented as approved.
- 11) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 9, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 9, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 10.
- 12) No part of the development shall be occupied until
- the altered access has been sited and laid out in accordance with the approved drawing (WSP Drawing 2646-SK01, Rev P03 dated 9 March 18) and constructed in accordance with Buckinghamshire County Council's guide note "Private Vehicular Access Within Highway Limits" 2013, and
 - minimum vehicular visibility splays of 79m from 2.4m back from the edge of the carriageway from both sides of the modified access onto Gorelands Lane have been provided in accordance with the approved plans.
- The visibility splays shall be kept clear from any obstruction between 0.6 metres and 2.0 metres above ground level.

- 13) Prior to occupation of the development, space shall be laid out within the site for parking and turning for cars, in accordance with the approved plans. This area shall be permanently maintained for these purposes.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or buildings shall be erected within the site, unless planning permission is first granted for such development.
- 15) No residential garden equipment or other residential paraphernalia (such as barbeques, outbuildings, refuse and recycling bins or areas, children's play equipment, garden furniture) shall extend beyond the 'private garden' areas outlined in red in the approved Landscaping Proposals Report – Revision D, dated 11 April 2018, by ME Landscape Studio."