



Appeal Decision

Hearing Held on 18 February 2020

Site Visit made on 19 February 2020

by B J Sims BSc (Hons) CEng MICE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2020

Appeal Ref: APP/G2245/W/19/3221581

College Road Nurseries, College Road, Hextable, BR8 7LT.

- 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 Hextable Properties Limited against the decision of Sevenoaks District Council.
 - The application Ref 18/02067/OUT, dated 29 June 2018, was refused by notice dated 8 November 2018.
 - The development proposed is the replacement of the existing garden centre with a residential development.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description above is taken from the refusal notice, as more appropriately indicating the nature of the proposed development than the application form.
3. The application and appeal are in outline, save that the means of access is for detailed consideration at this stage.
4. The application included detailed plans of a projected housing layout. These plans are taken into account but treated as illustrative.
5. The entire site of the present appeal has been the subject of an unsuccessful application for the grant of a Certificate of Lawful Existing Use or Development (LDC) as a Commercial and Wholesale/Retail Nursery. The information upon which that application relied forms part of the evidence in this appeal, as supplemented at the Hearing. However, the LDC application itself is not a matter for determination in this appeal.
6. Part of the appeal site is the subject of an undetermined planning application for nine dwellings in relation to allocation HO106 of the emerging Sevenoaks Local Plan, as referenced below. Equally, that application is not for consideration in this appeal.

Description

The Site

7. The appeal site extends to 2.7ha and encompasses a range of derelict greenhouses, covering much of the land, together with the abandoned associated boiler houses, open hardening off areas, vehicle hardstandings and a domestic dwelling, The Gables, which is still occupied by the site owners, who ran the nursery business until their retirement some twenty years ago.
8. The site fronts the north west side of College Road between the settlement boundaries of Hextable about 0.3km to the north east and Swanley, some 0.6km to the south west.
9. Immediately to the west is a commercial site with storage units and to the east a domestic property, Ardgowan.
10. College Road past the site is largely of single track width with wider sections where vehicles can pass each other. Apart from the entrance to The Gables, the road boundary is lined with a mature hedgerow.
11. The site is within the Metropolitan Green Belt.

The Proposal

12. The outline proposal includes access details comprising a central roadway constructed over the existing site entrance, with a footway and vision splays at the College Road frontage, requiring the removal of the front hedgerow.
13. Otherwise, the illustrative plans show a development of 61 dwellings, with some 16 fronting College Road and the rest arranged in a circular pattern with a central open space, together occupying most of the rest of the site, along with areas of new landscape planting.
14. The Appellants propose that 40% of the dwellings would be secured as affordable homes.
15. The Appellants also propose the creation of off-site pedestrian and cycle links to the surrounding areas of Hextable and Swanley but no specific details are provided as to how this would be achieved.

Draft Housing Allocation

16. The central front part of the site, comprising the curtilage of The Gables, some outbuildings and a hardstanding area, in all amounting to 0.27ha, is allocated under Ref HO106 in the Submission Version of the Sevenoaks Local Plan, as further referenced below.

Main Issues

17. As agreed at the Hearing, the main issues for consideration in this appeal are:
 - 17.1 whether or not the proposed development would be inappropriate development in the Green Belt, in terms of the current National Planning Policy Framework (NPPF),
 - 17.2 its effect on the character and appearance of the site and the surrounding rural area between Hextable and Swanley,

- 17.3 its effect with respect to vehicular, cycle and pedestrian access and highway safety,
- 17.4 the degree to which the development would be sustainable, including with respect to its location and the drainage of the site,
- 17.5 its potential effect on local ecology, including protected species,
- 17.6 its effect on the amenity of neighbouring property,
- 17.7 whether the development would provide properly and effectively for an appropriate contribution to an identified need for affordable housing,
- 17.8 whether there exists a five year supply of housing land for the District with reference to the relevant provisions of the NPPF and the presumption in favour of sustainable development, and
- 17.9 in the overall planning balance, if the development is found to be inappropriate in the Green Belt, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal within the Green Belt.

Reasons

Planning Policy and Case Law

National Policy and Guidance

- 18. The NPPF contains, at paragraph 11, the central presumption in favour of sustainable development. According to paragraph 11c, this means, for decision-making, approving development that accords with an up to date development plan without delay. Paragraph 11d provides that, where the development plan policies most important for determining the appeal are out of date, granting permission unless (i) NPPF policies that protect areas of particular importance, including the Green Belt, provide a clear reason for refusal, or (ii) any adverse effects of granting permission would significantly and demonstrably outweigh the benefits, assessed against the NPPF as a whole.
- 19. Housing policies are considered out of date where the planning authority cannot demonstrate a deliverable five year housing land supply or the Housing Delivery Test indicates delivery of less than 75% of requirement over the previous three years.
- 20. At paragraphs 73-74, the NPPF provides that planning authorities should identify a minimum five year supply of deliverable housing sites, including a 5% buffer to ensure choice, increased to 20% where there has been significant under delivery over the past three years. That is as measured against the Housing Delivery Test, where this indicates delivery less than 85% of the housing requirement.
- 21. At paragraphs 133-139, the NPPF emphasises the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open. The purposes of the Green Belt include preventing neighbouring towns merging and safeguarding the countryside from encroachment.

22. At paragraphs 143-145, the NPPF makes clear that the construction of new buildings is inappropriate development in the Green Belt requiring very special circumstances to justify it. 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.
23. Paragraph 145(g) makes the exception that the redevelopment of previously developed land (PDL) should not be regarded as inappropriate in the Green Belt where the development would either have no greater impact on openness or where it would not cause substantial harm to the openness of the Green Belt and would contribute to meeting an identified need for affordable housing.
24. The Glossary to the NPPF excludes from the definition of PDL land that is or was last occupied by agricultural buildings.

Development Plan

25. An overarching provision of the Act and the NPPF is that development proposals that accord with the development plan should be allowed unless material considerations indicate otherwise.
26. The statutory development plan includes the Sevenoaks Local Development Framework Core Strategy (CS), adopted February 2011, and the Sevenoaks District Council Allocations and Development Management Plan (ADMP), adopted in 2015.
27. CS Policies SC1 and SP2 together presume positively in favour of sustainable development in line with the NPPF, including with regard to climate change.
28. CS Policy LO8, on the Countryside and the Rural Economy, states that the Green Belt will be maintained and the countryside conserved.
29. CS Policy SP3 provides for 40% affordable housing from developments of 15 dwellings or more.
30. CS Policy SP11 requires the biodiversity of Sevenoaks to be conserved and opportunities sought for its enhancement.
31. CS Policy SP1 and ADMP Policy EN1 together set principles seeking high quality design.
32. ADMP Policy EN2 protects residential amenity, including that of existing and future occupiers of nearby properties.
33. All the foregoing policies are essentially consistent with the NPPF.
34. ADMP Policy T1 requires development to mitigate travel impact with reference to congestion, safety and environmental impact. This is also essentially consistent with the provisions of the NPPF for refusal of development if there would be unacceptable impact on highway safety and giving priority first to pedestrian and cycle movements.

Emerging Local Policy

35. The Submission Version of the Sevenoaks Local Plan (SLP) is under Examination for legal compliance and soundness but the Examination has not progressed to a point where, for the purposes of this appeal, its policies carry

more than very little weight. This is due to, as yet, unresolved concerns relating to the statutory Duty to Co-operate with neighbouring authorities over cross-boundary strategic issues.

36. It is nevertheless of note that the draft SLP includes housing allocation HO106 for a central, frontal part of the present appeal site for 16 to 22 dwellings over a developable area of 0.27ha, which includes the present dwelling house, a yard area and some outbuildings.

Case Law

37. In the judgment in the case of *Broxbourne*¹, cited by the Appellants, it was held that a horticultural or agricultural nursery was capable of being regarded as PDL, having been last in use for non-agricultural purposes by virtue of permitted and commenced uses also for wholesale and retail operations.

Green Belt

Policy, Land Use and whether or not inappropriate

38. Within the adopted development plan, CS Policy LO8 of 2011 merely states that the Green Belt will be maintained. That is not inconsistent with the NPPF of 2019 but, as the Council accepts, the approach of the NPPF to the Green Belt, as set out above, should be followed.
39. The residential redevelopment of the appeal site would be inappropriate in the Green Belt unless the exception provided by paragraph 145(g) of the NPPF were engaged by virtue of the site being PDL as defined by the NPPF.
40. In the case of *Broxbourne* the wholesale and retail use of the nursery in question had been expressly permitted. However, in the case of College Road Nurseries, the claim of the Appellants that the appeal site should be regarded as PDL is based upon documentary evidence of the past operation of the nursery business, in the absence of any express permission for non-agricultural, wholesale and retail uses. Thus, whether the site is to be regarded as PDL for the purposes of this appeal is a matter of fresh judgement on consideration of that evidence.
41. With reference to the submitted information, it is accepted that the agricultural use of the site as a nursery is long established and that the nursery business could be resumed. The factual accuracy of the documentary and verbal evidence of the Appellants as to the past activities on the appeal site is unchallenged. It is clear from an affidavit by the property owner and accompanying exhibits, including newspaper articles, as well as testimony by the family of the owners at the Hearing, that College Road Nurseries was a large scale agricultural business. It involved frequent commercial wholesale deliveries and collections of produce, including for retail sale over part of the site, involving car-borne visits by retail customers viewing produce in a show greenhouse.
42. Added to that is the identification by the Council of the central front portion of the land as PDL for redevelopment for up to 22 houses, under draft allocation HO106 of the Submission SLP. It is understandable that the Appellants perceive an inconsistency between this draft allocation and the refusal which

¹ Lee Valley RPA and Broxbourne BC and Britannia Nurseries - EWHC 185 (Admin) [2015] paragraphs 37-40

led to this appeal. The Council seeks to make a distinction between PDL, as defined in the NPPF and applied to The Gables and its immediate surroundings, and brownfield land, as applied to the whole site when initially considered, in the preparation of the SLP, for redevelopment. Be that as it may, the designation of part of the site and its allocation under Ref HO106 remain untested at Examination and carry very little weight.

43. On a fresh and independent appraisal of the evidence, despite the undoubted scale of the former nursery business with its wholesale and retail elements, the appeal site remains essentially agricultural, having regard to the whole site as a single planning unit. The wholesale and retail elements of the nursery operation represent natural ancillary aspects of a commercial nursery and do not amount to a practical change to a mixed use, such as had been permitted in the case of *Broxbourne*.
44. On that basis, despite the description of the site as a garden centre, accepted by the Council in assessing the application, the site, as a whole, is not to be regarded as PDL and NPPF paragraph 145(g) is not engaged for the purposes of this appeal.
45. Accordingly, the proposed development would be inappropriate in the Green Belt, requiring very special circumstances to justify it.

Openness

46. Moreover, the replacement of the disused and derelict greenhouses, open hardening off areas and other buildings by 61 dwellings, as illustrated, with associated domestic paraphernalia, vehicles and activity, would alter the visual appearance of the site, compared with its use as a nursery. As a further matter of judgement, this would have the effect of reducing the physical and apparent openness of the Green Belt at this point. That is even taking into account that the east and west sides of the site bound other commercial or domestic development.
47. Furthermore, this reduction in openness would compromise and partly erode the relatively narrow space that exists between the respective settlement boundaries of Hextable and Swanley. This would be contrary to the stated purposes of the Green Belt to prevent neighbouring towns from merging, avoid urban sprawl and keep land permanently open. This is properly to be judged as causing substantial harm to the openness of the Green Belt.
48. Thus, even if the site had been regarded as PDL, the exception of NPPF paragraph 145(g) would not be met and the question of the benefit of affordable housing does not arise in this connection. However, the contribution to affordable housing is a matter for further consideration below.

Character and Appearance

49. The removal of the derelict greenhouses and other structures would, in itself, improve the appearance of the appeal site, albeit that benefit could be realised without the need for planning permission.
50. More importantly, College Road, at this point is largely rural in character. Therefore, the loss of the mature front boundary hedgerow, in favour of a built street frontage behind a splayed access with a pedestrian footway, would make this part of the Road markedly more urban. The same would be true of the

main, internal extent of the site, where essentially rural, agricultural nursery buildings and greenhouses would give way to relatively intense urban residential development, as illustrated.

51. These effects could be softened to some extent by replacement landscape planting, secured and maintained by planning condition. Even so, despite existing domestic and commercial development on either side of the site, the proposed dwellings would result in a significant degree of visual encroachment of built development into the essentially rural area between the settlement boundaries of Hextable and Swanley. This area is not subject to any policy protection as a strategic gap, as erroneously implied in the third reason for refusal and acknowledged by the Council at the Hearing. However, the development would still have an unacceptably adverse impact upon the appearance and character of the site and its surroundings. This would be contrary to the design principles of CS Policy SP1 and ADMP Policy EN1.

Access and Highway Safety

52. Based upon the submitted transport statement and discussion at the Hearing, notwithstanding the 61 dwellings illustrated, the appeal site could accommodate at least 70 dwellings. College Road is largely rural and would have no footways or lighting, apart from along the frontage of the appeal site, which is outside either of the adjacent settlements. In the circumstances, the development would be likely to generate upwards of 400 vehicle trips a day, including some 40 in the peak hours, as indicated by accepted trip generation rates.
53. These figures are well within the notional 300 vehicles per hour capacity of a road of this standard and they compare with the equivalent generation from a garden centre. However, the proper comparison is with an agricultural nursery, for which no definitive figures are available. Depending on the nature of the nursery operation, overall traffic generation would be likely to be lower than that of a garden centre or residential development, albeit with a higher commercial content. At the same time, most garden centre or nursery trips would not be expected to take place during the morning and evening peak periods.
54. The nature of College Road is a more important consideration than mere numerical capacity. From the evidence and from personal observation, conflicting traffic movements, causing potentially dangerous reversing and avoiding manoeuvres, are common, even in present circumstances. With no footways or lighting along most of the length of College Road, any additional peak hour traffic would potentially give rise to unacceptable inconvenience and danger to drivers, cyclists and pedestrians. Traffic levels would be substantially higher than for the draft SLP allocation of part of the site, which carries minimal weight in any event.
55. Even though the width and visibility of the site entrance could evidently be made to comply with the same accepted standards for either development, the adverse impact on road safety due to the present appeal proposal, judged on merit, would be in unacceptable conflict with ADMP Policy T1, regarding travel impact, as well as with the NPPF in this respect.

Sustainability

Location

56. From the foregoing consideration of the nature and safety of College Road, it follows that the appeal site is not in a sustainable location. The development would result in a preference for car trips over cycling or walking along College Road, even for short journeys to local facilities, with no clear prospect of any enhanced pedestrian or cycle routes being created. This places the proposal into conflict with CS Policies SC1 and SP2 and the NPPF with respect to this aspect of sustainability.

Flood Risk and Drainage

57. The Appellants provide a Flood Risk Assessment which confirms that the site is at low risk of flooding but leaves outstanding the question whether soakaways or an infiltration system would be acceptable, subject to on-site testing prior to the development commencing. Such testing could be undertaken to inform the detailed design for submission in connection with reserved matters. This, or an alternative sustainable urban drainage system, could be secured by way of planning condition attached to any outline permission.

Other Factors

58. As a further aspect of any reserved matters submission, the development could be designed in accordance with prevailing building standards to take into account the requirement to mitigate the effects of climate change, in compliance with relevant policy.

Ecology and Protected Species

59. The Appellants also provide an Ecological Appraisal. This notes the prospect that nesting birds and protected bats, and more particularly reptiles, might resort to the appeal site, having regard to its present relatively overgrown and undisturbed state. However, there is no direct evidence of the presence of protected species. Bats or reptiles might be detected by an appropriate ecological survey, including the setting of refugia to establish the presence of any reptiles, and this could result in recommendations and requirements to avoid, accommodate or translocate them as part of the detailed design of the development.
60. It is also recommended that new landscape planting should include native species, of benefit to wildlife, with piles of brash from site clearance also left to provide habitat for reptiles, small mammals and invertebrates. Wall-integrated bird and bat boxes are also recommended. Provided existing species were safeguarded, these measures would engender a desirable net enhancement to local biodiversity.
61. At this outline stage, a condition to secure such a prior survey and compliance with all ecological recommendations would suffice to ensure that the development would ultimately meet the requirements of CS Policy SP11 regarding the conservation of local biodiversity and opportunities to enhance it, consistent also with the NPPF.

Amenity

62. There is no doubt that the proposed development would introduce domestic activity noticeable to neighbouring residents, in particular at Ardgowan to the east. All design details are reserved but there would potentially be substantial separation distances between buildings. Therefore, effects such as noise, disturbance, overlooking or light pollution can reasonably be expected to be addressed in any detailed scheme. Direct impact on amenity could thus be kept to acceptable levels in planning terms. To that extent, the development would comply with the aim of ADMP Policy EN2, consistent with the NPPF, to protect the amenity of occupiers of nearby properties.
63. There would, however, be an indirect impact on the amenity of neighbouring property consequent upon the increased use of College Road, for reasons considered above in relation to access and highway safety.

Affordable Housing

64. There is no dispute that, as proposed, any residential development of the appeal site would provide 40% affordable homes in compliance with CS Policy SP3. The only argument is between this benefit being secured via a legal planning obligation or whether a negative planning condition would suffice at this outline stage. In this connection, the Appellants cite a previous appeal decision, wherein such a condition was imposed. At the same time, it is the clear preference of national Planning Practice Guidance that a legal agreement should be used, other than exceptionally.
65. In this case, with the clear and undisputed intention of the Appellants to contribute affordable homes in line with adopted policy and with all matters apart from access reserved, a negative condition would suffice to ensure that the requisite contribution would ultimately be made.
66. In the circumstances, the contribution that the proposed development would make to an identified local need for affordable housing is to be regarded as a substantial planning benefit to be taken into account in the overall planning balance.

Housing Land Supply

67. The annual housing land requirement for Sevenoaks is 707 units. Based upon the draft allocations of the Submission SLP, the Council calculates that it can demonstrate a five year supply of deliverable housing sites, including the requisite 5% buffer (3,711 units), with a small surplus of 9 units.
68. The Government Housing Delivery Test has recently shown that housing delivery in Sevenoaks over the last three years has fallen to 71% of requirement, well below the 85% threshold for the application of the 20% buffer stipulated by NPPF paragraph 73 and also below the 75% threshold where housing policies would be regarded as out of date in any event, with reference to NPPF paragraph 11d.
69. Whether or not the Submission SLP allocations would provide a five year housing land supply if ultimately found sound and adopted, the present position is that the SLP has not progressed beyond the initial stages of Examination and the Council accepts that its policies and allocations carry very little weight.

70. For the purposes of this appeal therefore, the only conclusion can be that the Council cannot demonstrate a five year housing land supply and that the market housing as well as the affordable housing contributed by the development would be a substantial planning benefit, in the face of an agreed acute shortfall in Sevenoaks in both sectors.

71. Accordingly, NPPF paragraph 11d is engaged in deciding this appeal.

Overall Planning Balance

72. Furthermore, following the finding above that the proposed development would be inappropriate in the Green Belt, NPPF sub paragraph 11d(i) is relevant in terms of whether NPPF policies to protect the Green Belt provide a clear reason for dismissal of the appeal.

73. It is also found above that, in addition to harming the Green Belt by way of inappropriateness, the development would also cause substantial harm to the openness of the Green Belt, to the character and appearance of the site and surroundings and to road safety and that it would be in an unsustainable location with respect to travel, all contrary to adopted development plan policies which are consistent with the NPPF.

74. Against these adverse impacts must be set the significant benefit of contributions to affordable and market housing, as well as the potential for a net enhancement of local biodiversity.

75. On a balance of judgement however, these benefits are not sufficient to outweigh the harm by way of inappropriateness and the other harms identified and the development would be in conflict with the development plan as a whole. Accordingly, the requisite very special circumstances to justify the development in the Green Belt cannot exist. Therefore, the policies of the NPPF for the protection of the Green Belt provide a clear reason for the dismissal of this appeal, in terms of paragraph 11d(i).

76. There is no requirement to carry consideration of the factors for and against the appeal proposal further. However, if, in an alternative judgement, the development had been found to be not inappropriate in the Green Belt, NPPF sub paragraph 11d(i) would not have been engaged. Even so, under sub paragraph 11d(ii), the harms to the character and appearance of the site and surroundings, to road safety and with regard to the unsustainable location of the site, would still significantly and demonstrably outweigh the benefits of the new affordable and market housing and biodiversity enhancement. This would also have warranted dismissal of the appeal.

Conclusion

77. For the foregoing reasons, I conclude that this appeal should be dismissed.

B J Sims

Inspector

APPEARANCES

FOR HEXTABLE PROPERTIES LIMITED - APPELLANTS:

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FOR SEVENOAKS DISTRICT COUNCIL - LOCAL PLANNING AUTHORITY:

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DOCUMENTS

- 1 Mr Chandler - transcript
- 2 Appellants Updated Statement and Appendices
- 3 Council Updated Statement and Appendices