



Appeal Decision

Site visit made on 17 August 2020

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2020

Appeal Ref: APP/G2245/W/20/3244390

**New Tyehurst Farmhouse, Chiddingstone Hoath, Edenbridge,
Kent TN8 7DA**

- 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 Lee Witchell against the decision of Sevenoaks District Council.
 - The application Ref 19/01052/FUL, dated 8 April 2019, was refused by notice dated 8 July 2019.
 - The development proposed is conversion of agricultural barns into 16 residential units and the demolition of 2 residential units and the construction of 2 replacement dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The address of the appeal property appears in various ways within the documents. The heading above includes the address as set out in the appeal form.
3. The Council's fourth reason for refusal related to details of surface water drainage. The appellant submitted a surface water drainage strategy with the appeal. On this basis, the Council indicated that it would no longer pursue this reason for refusal and that surface water drainage could appropriately be the subject of a planning condition. I share that view.

Main issues

4. The main issues are:
 - whether the proposal would amount to inappropriate development in the Green Belt and the effect on the openness of the Green Belt and the purposes of including land within it;
 - the effect of the proposal on the supply of employment sites;
 - the effect of the proposal on biodiversity; and
 - whether the proposal would make adequate provision for affordable housing.

Reasons

Green Belt

5. The site comprises a complex of agricultural style portal frame buildings, together with other structures and extensive hard standings, which are occupied by a business trading in agricultural machinery and contracting services. Two smaller buildings within the complex (Buildings D and E) are in residential use. The Council advises that the commercial operations do not have the benefit of planning permission but appear to have continued for a period of more than 10 years. The proposal is to convert Buildings A, B and C to residential use. Buildings D and E would be demolished and two replacement dwellings would be constructed.
6. The Council's second reason for refusal stated that the proposal would result in harm to the openness of the Green Belt through excessive bulk and mass, contrary to Policy GB7 of the Sevenoaks Allocation and Development Management Plan (ADMP). Policy GB7 permits the re-use of buildings that are of permanent and substantial construction provided that the new use would not have a materially greater impact on the openness of the Green Belt. The policy is consistent with paragraph 146(d) of the National Planning Policy Framework (the Framework) which deals with the re-use of buildings in the Green Belt in similar terms.
7. The Council's assessment noted that the proposed residential use would generate some domestic paraphernalia which would have some effect on openness. However, it was also noted that the current use of the site entails outdoor storage of agricultural equipment and machinery which also has an impact on openness. The officer's report accepted that, in general, the buildings proposed for conversion are of permanent and substantial construction and could be converted without major reconstruction. The report also accepted that the proposed two replacement dwellings would accord with paragraph 145(d) of the Framework in that they would not be materially larger than the buildings that they would replace.
8. The basis for the Council's Green Belt objection was that part of one building (Building B) was unauthorised and could potentially be subject to enforcement action. Following the determination of the application, the appellant sought (and was granted) a Certificate of Lawful Existing Use/Development in respect of the relevant part of Building B. This was on the basis that it had been in existence for more than 4 years. The Council's appeal statement notes the grant of the Certificate and offers no further comments on Green Belt matters, beyond that which is stated in the officer's report. It is reasonable to infer from this that the Council now accepts that the proposal complies with Policy GB7 and the Framework.
9. In any event, having regard to the submitted structural reports, the information contained in the officer's report and my observations on site it is my view that the proposed conversion of Buildings A, B and C would represent the acceptable re-use of existing buildings, consistent with Policy GB7 and the Framework. Any parking and domestic paraphernalia associated with residential use would be unlikely to have a greater impact on openness, or on the character and appearance of the site, than the outdoor storage elements of the existing use. I also agree that the two replacement dwellings would be in

the same use as the buildings they would replace and would not be materially larger. This would accord with paragraph 145(d) of the Framework.

10. The Council and the appellant agree that the site represents previously developed land, in the terms of the Framework. If the scheme is assessed as the partial redevelopment of previously developed land, it would not have a greater impact on the openness of the Green Belt than the existing development does. It would therefore accord with paragraph 145(g) of the Framework. Overall, I conclude that the proposal would not amount to inappropriate development in the Green Belt, nor would it harm the openness of the Green Belt or conflict with the purposes of including land within it.

Employment

11. The Council's first reason for refusal states that the proposal would result in the loss of a viable employment site. Two policies are referred to, Core Strategy (CS) Policy LO8 and ADMP Policy EMP5. I note that Policy LO8 supports the diversification of the rural economy and small scale business development, subject to landscape protection considerations. However, as it does not refer specifically to resisting changes of use from employment to other uses, I do not think it is relevant to the appeal.
12. However, ADMP Policy EMP5 does seek to control the loss of non-allocated lawful business premises to other uses. It states that such changes of use are only to be supported where it has been demonstrated, through a marketing exercise, that there is no reasonable prospect of their continued use for business in the longer term. As noted above, the site is occupied by a business trading in agricultural machinery and contracting services. Although the commercial operations do not have the benefit of planning permission, the Council advises that they have continued for a period of more than 10 years. The appellant does not dispute this. On the balance of probabilities it seems likely that the commercial operations would be immune from enforcement action due to the passage of time.
13. In my view the appeal premises should be regarded as business premises within the scope of Policy EMP5. The appellant argues that the level of direct employment at the site is low and that the business owner would either retire or relocate. However, the policy is not concerned with the prospects for an individual business. Rather, it is the potential of the site to contribute to the rural economy that is the focus of the policy. In this regard there is no evidence before me that these modern and substantial buildings could not continue to provide suitable premises for a rural business or businesses.
14. The appellant also points out that the site has not been assessed through the Council's employment land review. Whilst that may be so, there is nothing in the policy to suggest that this is a necessary pre-condition for the policy to apply. The appellant's final comments state that some form of marketing is now being undertaken. However, there is very little information before me on the precise nature of this exercise, nor of any responses to the marketing. Consequently, I attach very little weight to this evidence.
15. I conclude that the proposal would result in the loss of an employment site and that it has not been demonstrated that the site could not continue to contribute to the rural economy. The proposal would therefore conflict with ADMP Policy EMP5.

Biodiversity

16. The site is not subject to any statutory nature conservation designations, nor does it contain any priority habitats. A strip of land to the rear of Building B is included in the Woods South of Chiddingstone Castle Local Wildlife Site (LWS). CS Policy SP 11 states that sites designated for biodiversity will be protected, with the highest level of protection given to nationally designated Sites of Special Scientific Interest, followed by LWS. The County Council's ecological advice service has commented that this strip would be lost to the LWS because it would be incorporated into gardens for the dwellings proposed in Building B. It was suggested that there should be an assessment of the impact on the LWS, together with details of how such impact would be mitigated.
17. The appellant's ecologist commented that the strip of land contained plantation woodland which was neither ecologically diverse nor typical of the LWS. It was suggested that the biodiversity value was so low that the land may have been included in the LWS in error. By the time of my visit there was no evidence of plantation woodland and the land was generally overgrown with low level vegetation. The Council accepts that the current condition of the land is such that it makes only a limited contribution to biodiversity. Nevertheless, the condition of land can change over time and it is not disputed that the land in question has been designated as part of the LWS.
18. The incorporation of the land into 8 private gardens, 6 of which would be relatively small, would limit the contribution that it could make to biodiversity in the future. The Framework seeks to protect all sites of biodiversity value, in a manner commensurate with their statutory status, and to provide net gains for biodiversity. The application site includes an area of open space between the complex of buildings and a fishing lake within the northern part of the site. This land is proposed to be managed as amenity space for the future residents. The extent and nature of the land is such that it offers ample scope to accommodate biodiversity enhancements, consistent with its proposed function. Having regard to the area of the LWS that would be incorporated in gardens, and the limited contribution this land currently makes to biodiversity, I am satisfied that in this case it would be appropriate to secure a scheme of compensatory biodiversity enhancements by way of a condition.
19. The ecological scoping report found no evidence of protected or notable species, or habitat suitable for such species, anywhere on the application site. A further survey was undertaken to assess the fishing lake, together with other waterbodies in the vicinity, for its potential to support great crested newt (GCN). None of the waterbodies were thought to be suitable for GCN and, on this basis, the report concluded that the appeal site was unlikely to provide terrestrial habitat that could support the species.
20. I note that an interested party has reported finding GCN in one of the off-site ponds which was assessed. Nevertheless, I am satisfied that any potential risk to GCN could be mitigated through a precautionary approach, such as hand searching any vegetated areas of the appeal site prior to clearance. This approach could be secured by a condition. GCN are subject to legal protection such that, in the event that they were discovered within the site, works would cease and it would be necessary to obtain a licence from Natural England. This process would secure any further mitigation which may be required.

21. Overall, I do not consider that the proposal would result in significant harm to biodiversity. There would be minor harm from the loss of part of a LWS, albeit that the area in question currently makes a limited contribution to biodiversity. Appropriate biodiversity enhancements could be secured by a condition. Subject to such a condition, the proposal would not conflict with CS Policy SP 11 or with the policies of the Framework relating to the natural environment.

Affordable housing

22. CS Policy SP 3 requires the provision of affordable housing in all types of residential development. The Council and the appellant agreed that the two replacement dwellings should not be included in the calculation. The proposal would result in a net gain of 16 dwellings. Consequently, Policy SP 3 would require 40% of the dwellings to be affordable. The policy is consistent with the Framework which states that it is important that the needs of groups with specific housing requirements are addressed. Where a need for affordable housing is identified, the Framework states that planning policies should specify the type of affordable housing required and expect it to be met on-site (unless some particular circumstances apply).
23. The Design and Access Statement states that affordable housing would be provided. The appellant's final comments say that a draft S106 Agreement was being prepared. However, there was no unilateral undertaking or agreement in place at the time the appeal was submitted. Moreover, there is still no unilateral undertaking or agreement before me now. Whilst I note the appellant's intention, the delivery of affordable housing has not been secured.
24. I have considered whether it would be appropriate to impose a condition requiring such an agreement to be completed. However, Planning Practice Guidance (the Guidance) advises that a negatively worded condition limiting the development that can take place until a planning obligation has been entered into is unlikely to be appropriate in the majority of cases¹. The exceptional circumstances identified in the Guidance do not apply here so in my view it would not be appropriate to impose such a condition in this case.
25. I conclude that the proposal generates a requirement for affordable housing. No delivery mechanism has been secured so the proposal would not make adequate provision. It is therefore in conflict with CS Policy SP 3 and with the policies of the Framework relating to housing.

Other matters

26. The proposal would deliver a net gain of 16 dwellings. Having regard to the objective of boosting the supply of homes set out in the Framework, this would be an important benefit of the scheme. Moreover, the Council accepts that it cannot currently demonstrate a five year housing supply compliant with the full objectively assessed need in the district. I return to the implications of that for decision making below.
27. Chiddingstone Parish Council, together with other organisations and local residents, objects to the creation of a residential enclave in a remote part of the Area of Outstanding Natural Beauty (AONB). Objections are also raised in relation to Green Belt, wildlife, traffic generation, noise, local services and

¹ Reference ID: 21a-010-20190723

privacy. I have commented above on Green Belt and wildlife. Whilst it is right to say that the development would be largely dependant on transport by car, both national and local planning policies allow for the possibility of converting existing rural buildings to residential use. These policies necessarily entail a degree of car traffic and some additional use of local services.

28. The site already contains three portal frame buildings characterised by long horizontal lines, high eaves, low pitched roofs and modern materials. The proposals would not increase the mass and bulk of these buildings. New cladding, and the introduction of domestic doors and windows, would change the appearance of the existing structures somewhat but would not alter their essential form and character. The addition of parked cars and some domestic paraphernalia would be balanced against the removal of outdoor storage. Overall, I do not consider that the proposals would be harmful to the landscape of the AONB.
29. The highway authority has advised that the proposal is unlikely to generate more traffic than the existing use. Consequently, the level of noise generated by the site is unlikely to be increased (although there is no evidence that it would be materially reduced). The proposed dwellings would be sufficiently separated from existing dwellings to avoid any impact on overlooking or privacy.
30. There were also representations in support of the proposal. These related to the potential provision of affordable housing and to a suggestion that the noise climate would be improved. I have commented above on these matters.

Conclusions

The development plan

31. The proposal would conflict with development plan policies relating to the supply of employment sites and the delivery of affordable housing. On the other hand, it would comply with development plan policies relating to Green Belt and biodiversity. No conflict has been identified with other relevant policies, including those relating to design, amenity protection, landscape, noise and transport. Nevertheless, I consider that the conflicts with ADMP Policy EMP5 and CS Policy SP 3 are of sufficient importance that the proposal would be in conflict with the development plan as a whole.

Other considerations

32. This is a case where the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites, as required by the Framework. Moreover, this is not a case where policies of the Framework that protect areas or assets of particular importance (such as Green Belts and AONBs) provide any reasons for refusing the proposal. Consequently the approach to decision making set out in paragraph 11(d)(ii) is applicable.
33. Assessing the proposal against the policies in the Framework as a whole, I conclude that there would be no harm in relation to those policies relating to Green Belt, AONB and biodiversity. However, there is no evidence before me of any significant benefits under these headings. The proposal would support the objective of boosting the overall supply of housing. Whilst this would be an important benefit, the failure to secure the delivery of affordable housing would be a significant conflict with the Framework. There would be a lost opportunity

to provide much-needed units at this site. Moreover, allowing the proposal without any justification for omitting affordable housing would risk undermining the effectiveness of both local and national policies. In my view that would be an adverse impact which would significantly and demonstrably outweigh the benefits. Consequently the application of paragraph 11(d)(ii) does not weigh in favour of the appeal.

Overall conclusion

34. For the reasons given above, the proposal would be in conflict with the development plan. Whilst it would have the beneficial effect of delivering a net housing gain, I do not consider that is a consideration of sufficient importance to indicate a decision other than in accordance with the development plan. The appeal should therefore be dismissed.

David Prentis

Inspector