
Appeal Decision

Site visit made on 5 January 2021

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 4th February 2021

Appeal Ref: APP/L3625/20/3258089

Heathfield Nursery, Flanchford Road, Reigate Heath, Reigate RH2 8QR

- 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 Transloy Developments against the decision of Reigate & Banstead Borough Council.
 - The application Ref 19/02297/F, dated 7 November 2019, was refused by notice dated 16 March 2020.
 - The development proposed is demolition of the existing buildings and the construction of 7 residential units, together with associated access and landscaping.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Before the application was registered by the Council a revised location plan was submitted, and this became part of the application. The Council used this plan in its determination and I, too, will use it.
3. The Council refused the application for seven reasons. Two of these related to ecology and archaeology. Additional information was submitted at the appeal stage on these issues. The Council indicated that, if I was minded to allow the appeal, conditions could be applied on these matters; however, it did not formally withdraw the reasons for refusal. I am satisfied that subject to conditions the additional information resolves these matters and I will say no more about them.
4. Having considered the cases submitted by the two main parties, it seemed to me that the agreed position that at least parts of the site constituted previously developed land may not have been correct in light of the planning history of the site provided. I therefore asked these parties for further representations on that matter.
5. As a result, the Council altered its position so that it now takes the view that none of the site represents previously developed land. The appellant maintains the position that the appeal site represents previously developed land, but in the alternative, if as a consequence I were to find that the development would represent inappropriate development in the Green Belt, that there are very special circumstances to allow for permission to be granted. This decision reflects these positions.

Main Issues

6. The main issues are:

- whether the proposal would be inappropriate development in the Green Belt having regard to the development plan and the National Planning Policy Framework (the Framework);
- the effect on the openness of the Green Belt;
- the effect on the character and appearance of the area;
- the effect on the setting of heritage assets;
- whether the proposal would result in the loss of employment land;
- whether the proposal provides for an appropriate proportion of smaller homes;
- whether the proposal provides for sufficient off-street car parking for the convenience of residents and visitors; and
- would the harm by reason of inappropriateness, and any other harm be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

7. The appeal site is located on sloping but terraced ground away from any settlement. To the east and west there are a small number of dwellings and other buildings including a public house. Access is from Flanchford Road via a track that crosses part of a golf course. Currently on site are various buildings ranging from the substantial and well-built constructed from blockwork and metal sheeting to mostly derelict previous glasshouses, as well as areas of hardstanding. There is a public right of way along the access track and another public right of way outside the site but adjacent to the south.
8. The proposal is to demolish all the buildings on site and redevelop the site for seven dwellings. Five would be detached, four utilising the same design, and two being a pair of semi-detached dwellings.

Whether inappropriate development

9. The appeal site lies in the Green Belt. Policy CS3 of the Reigate & Banstead Core Strategy (the CS) indicates that planning permission will not be granted for inappropriate development in the Green Belt unless very special circumstances clearly outweigh the potential harm to the Green Belt. Policy NHE5 of the Reigate & Banstead Development Management Plan (the DM Plan) indicates that replacement buildings in the Green Belt will be permitted taking into account various conjunctive criteria including that the existing building is lawful and the replacement is in the same use, and the design and associated landscaping respects the character of the area and openness of the Green Belt. As the proposal would change the use, this exemption does not apply.
10. There is no definition of 'inappropriate development' in development plan policy other than as set out in Policy NHE5 of the DM Plan, so it is proper to use that set out in the Framework. Paragraph 145 of the Framework sets out that the

construction of buildings should be considered to be inappropriate in the Green Belt subject to a number of exceptions. The appellant has referred to paragraph 145 g) which allows as an exception, for the purposes of this appeal, the partial or complete redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development. The basis of this position is that there is a mixed use of agricultural and non-agricultural activities on site.

11. The Glossary to the Framework defines previously developed land as excluding "land that is or was last occupied by agriculture or forestry buildings" and includes the curtilages of such buildings. This should only apply to lawful uses, since otherwise there would be an undesirable incentive to breach planning control.
12. In 1994 an appeal¹ against an Enforcement Notice relating to the appeal site was dismissed. This Notice alleged a breach of planning control of "without planning permission, material change of use of the said land and buildings from use for agriculture to a mixed use for agriculture and retail sales of imported produce and goods". The requirements were to "cease the use of the land and buildings for the sale of goods and plants not produced on the land". It appears that the Enforcement Notice remains in place and therefore continues to apply. Whether it could or would be expedient for the Council to proceed with a prosecution for any non-compliance with the Enforcement Notice is not a matter for me.
13. The appellant seeks to maintain that the sale of goods and plants not produced on the land was not the only element to make a mixed use. However, it is clear from the appeal decision that in 1994 "it was not in dispute between the parties, that the present use of Heathfield Nurseries is a mixed horticultural and retail use", and thus there was no other element at that time.
14. Since then, of course, other uses may have been introduced. The additional element cited by the appellant is "storage". Indeed my colleague Inspector, in an appeal in 2016² relating to a potential change of use of a building as permitted development³, stated that the building "subject of the appeal was noted as being used for the sale of imported goods" and it was also being used for "the storage of non-agricultural imported items".
15. However, it is not clear from that decision whether that storage was ancillary to the sale of said imported items or additionally. Certainly, that statement does not mean a storage use is lawful (whether as part of a mixed use or not), and it is not the purpose of a Section 78 appeal such as this to certify such a use as lawful. At present I have nothing in front of me to indicate that the lawful planning use of the site is anything but agriculture.
16. In the absence of conclusive proof to the contrary I have nothing to show the lawful use of the appeal site is anything but solely for agriculture. Following the definition in the Glossary to the Framework it has not been shown that the appeal site represents previously developed land. Consequently, the exemption in paragraph 145 g) does not apply.

¹ Appeal references: APP/X/93/L3625/001101 and APP/C/94/L3625/632788

² APP/L3625/W/16/3146404

³ Pursuant to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015

17. While the mixed use prevented the change of use of one building on the site to three dwellings under the permitted development rights considered in the 2016 appeal, and again in 2019 in relation to another appeal⁴ proposing the conversion of a different building to dwellings, the current appeal is a different scenario to those. Those scenarios dealt both with actual and lawful uses. The actual use operating on the relevant date disappplied the Class Q provisions irrespective of whether that use was unlawful.
18. It is not asserted that the proposal would fall within any of the other exceptions set out in paragraph 145. Consequently, this means that the proposal would represent inappropriate development in the Green Belt. Paragraphs 143 and 144 of the Framework make clear that inappropriate development is, by definition, harmful to the Green Belt, should not be approved except in very special circumstances, and substantial weight should be given to any harm to the Green Belt.

Openness

19. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The assessment of openness can require a consideration of both spatial and visual aspects.
20. To provide an analysis of openness the appellant has provided figures comparing the footprint and the total volume of the buildings, both existing and proposed, where it maintains that significant reductions would occur. The Council does not dispute these figures. However, it seems to me that there are two additional factors that should also be taken into account in assessing spatial openness. Firstly, the proposed development is generally on two floors which would materially increase the floor area. Secondly, is the condition of some of the current buildings, and that some have large amounts of glass in their superstructure or are open in their sides. This results in the buildings at present having less effect than had they been well maintained and/or predominantly solid. I also take into account the reduction in hardstanding that is proposed and thus what is likely to be located upon that.
21. Taking this together I conclude in spatial terms the overall effect on openness would be neutral. I will consider the visual aspects of openness in the following section.

Character and appearance

22. The appeal site is located in a rural area. Buildings are predominantly scattered, although there are some small enclaves of built-form. The current condition of the site has a rural character, being of horticultural and similar buildings.
23. Although at present there are some smaller areas which are separated, for example the loggia area with its roof, and other areas with buildings or formal planting areas, the proposed development would sub-divide the overall area to a greater extent. In addition, the proposal would inevitably lead to a greater sub-urbanisation from the discrete individual gardens and the inevitable domestic paraphernalia which would be associated with the occupation of the individual houses.

⁴ APP/L3625/W/18/3208710

24. The designs of the proposed buildings seek to reflect a rural aesthetic in mimicking barn conversions, and while this would have less of an effect than other potential designs, this does not mean that it would not be out of keeping with the overall character and appearance of the area. It is also the case that it is unlikely that the exact same historic building form would have been repeated on site; there would normally be greater variation as buildings were constructed over time. Four identical buildings would be unlikely, and this repetition would lead to a feeling of urbanisation.
25. While the existing backdrop of trees and the trees on site would reduce some visual effects, that something cannot be seen does not make it acceptable. In any event due to the proximity of the public rights of way the site can be readily viewed from the public domain. In addition, the feature pedestrian route through the site towards the eastern end, with its formal design, would be an incongruous feature adding to the harms identified above.
26. Overall, the proposal would be harmful to the character and appearance of the rural area and would encroach into the countryside area. This would be contrary to the third of the purposes of the Green Belt as set out in paragraph 134 of the Framework and would therefore be harmful in visual terms to openness.
27. This means that even if I am incorrect on the agricultural status of the appeal site and it did represent previously developed land, the proposal would still represent inappropriate development in the Green Belt under paragraph 145 g) of the Framework. This is because it would have a greater impact on the openness of the Green Belt than the existing development.

Setting of heritage assets

28. The Council has identified several nearby statutory and locally listed buildings, with the Skimmington Castle public house being Grade II listed and The White House, Ivy Cottage and Heathfield Cottages all being locally listed buildings. All of these are heritage assets, with the listed building being a designated heritage asset. The Glossary of the Framework defines the significance of a heritage asset as the value of a heritage asset to this and future generations because of its heritage interest. The national Planning Practice Guidance also notes⁵ that 'significance' derives not only from a heritage asset's physical presence, but also from its setting.
29. In respect of the Skimmington Castle public house I am required, in accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) to have special regard to the desirability of preserving its setting. From the listing description and an exterior visit, it would appear that for the purposes of this appeal the significance of the listed building relates predominantly from its interior features.
30. Paragraph 193 of the Framework indicates that great weight should be given to the conservation of a heritage asset and this is irrespective of the level of harm that may occur. It is also emphasised that the more important the asset, the greater the weight should be. Paragraph 194 of the Framework indicates that any harm to the significance of a heritage asset, or from development within its setting, should require clear and convincing justification.

⁵ Reference ID: 18a-006-20190723

31. In respect of the Skimmington Castle public house the proposal would not affect the interior of it, and due to the intervening Heathfield Cottages and retained intervening vegetation its setting, and thus its significance, would be preserved.
32. For the non-designated heritage assets, in each case the current settings are compromised by the nature of the appeal site although there may have been some historic connection between the cottages and the nursery when part of a single estate. This would be lost and would result in some limited heritage harm. However, the demolition of the more modern buildings, particularly the blockwork and metal clad building, and the redevelopment of the site as proposed would enhance the settings of the non-designated heritage assets. I therefore conclude that in heritage terms that this would balance out thereby preserving the settings, and thus the significances, of the locally listed buildings.
33. As the settings of all the heritage assets would be preserved, the setting of and the significance of each asset would be conserved and great weight should be given to this, with special attention to the designated heritage asset. The proposal would therefore comply with Policy NHE9 of the DM Plan which requires development to protect and preserve the settings of heritage assets.

Loss of employment

34. Policy EMP4 of the DM plan indicates that the loss of employment land will only be permitted if it has been clearly demonstrated that there is no reasonable prospect (or demand for) the retention or redevelopment of the site for employment use, it would enable a demonstrable improvement in the quality and suitability of employment accommodation, or the proposal would provide a public benefit to outweigh the loss of the employment floorspace. It seems to me that the use of land for agriculture would provide employment and thus this policy is engaged.
35. The appellant confirms that no marketing exercise has been undertaken but refers to a study relating to West Sussex from 2009 that indicates that glasshouse area had fallen over the previous 15 years. The appellant emphasizes that the largest fall is in the South East of England. It also refers to the request in March 2020 from the Horticultural Trades Association at the beginning of the Covid-19 pandemic for financial assistance.
36. The 2009 Study is now relatively old and takes no account of significant changes in the horticultural industry flowing both from the pandemic and the United Kingdom's leaving of the European Union. I therefore give this report very little weight.
37. However, paragraph 121 of the Framework indicates that local authorities should take a positive approach to applications for alternative uses of land which is currently developed where this would meet identified needs. This includes supporting use of employment land for homes in areas of high demand, provided that it would not undermine key economic sectors and would be compatible with other policies in the Framework.
38. Without having undertaken an assessment of the need for the use of the appeal site for employment purposes, the proposal is contrary to the first criterion of Policy EMP4. The second criterion is not engaged. The third criterion

is a matter of planning balance. Due to the importance given to policies for protecting Green Belts in the Framework, I consider that the public benefit of the additional dwellings would not outweigh the loss of the employment floorspace. This is irrespective of whether "land which is currently developed" is synonymous with "previously developed land". Consequently, the proposal would be contrary to this policy overall.

Smaller houses

39. Policy DES4 of the DM Plan indicates that all new residential developments should provide homes of an appropriate type, size and tenure to meet the needs of the local community. This includes providing a sufficient proportion of smaller homes to ensure more balanced communities, help avoid areas of social exclusion and provide households with a greater range of choices to enable them to remain within the communities of which they are a part. Further on sites of less than 20 dwellings at least 20% of market homes should have either one or two bedrooms. All the proposed dwellings exceed this size.
40. The appellant concedes that the proposal is contrary to this policy but considers that the benefits of the scheme outweigh this harm. I will consider that below. However, it should be recorded that the proposal would be contrary to Policy DES4 of the DM Plan.

Parking

41. Policy TAP1 of the DM Plan indicates that car parking should be provided in accordance with local standards unless satisfactory evidence is provided to demonstrate that non-compliance would not result in unacceptable harm. It is not in dispute that to meet local standards each property should have two and a half spaces and that the layout only provides for two.
42. The appellant indicates that, although not explicitly shown on the proposal drawings, there is room in proximity to four of the proposed dwellings for additional spaces. Further, the layout is such that it would not result in parking on the public highway harmful to highway safety.
43. While I would concur on the last point, highway safety is not the only reason to provide sufficient parking in proximity to the dwellings they are to serve, as a layout should also provide sufficient parking for the convenience of residents and visitors. It should also be remembered that this is a full application, and while planning conditions can be utilised to resolve matters where necessary, care needs to be taken to ensure that other issues do not result. Further, locating all the 'additional' parking towards one end of the site, leaving the other properties with insufficient parking in close proximity to them, can lead to indiscriminate parking and should be considered to be poor design. In line with paragraph 130 of the Framework, development of poor design should be refused.
44. In this regard I consider that the layout could provide sufficient parking at the eastern end for Plots 5, 6 and 7 by utilising the area in front of Plot 7 and the lay-by opposite them for parking for Plots 5 and 6. I also consider that there would be sufficient parking for the occupiers of Plot 4 in the area between the parking area and the dwelling. This would involve blocking in one of the parking spaces proposed for this property; on a site of this size this would be unfortunate but would allow for proper operation. This would add up in

numerical terms to the total number of spaces sought by the Council, but the 'additional' spaces required to ensure that total would all be located at the central and eastern end of the site.

45. No opportunities exist for additional parking for Plots 1, 2 and 3 in proximity to the dwellings without resulting in conflicts either with manoeuvring to/from other spaces or being in undesirable proximity to other dwellings leading to poor living conditions and to potential conflicts between residents. This means that there would be insufficient parking for the convenience of the residents of these properties and their visitors. While in numerical terms there would be sufficient parking to comply with Policy TAP1 of the DM Plan the proposal would fail to comply with Policy DES1 of the DM Plan which requires high quality design, an appropriate environment for future occupiers and adequate provision for parking.

Other considerations

46. The appellant maintains that the redevelopment of the site in the way proposed would be beneficial to openness; I have considered that above.
47. The proposal would provide for seven additional dwellings, which would be economically and socially beneficial. Due to the numbers involved I give this moderate weight.

Conclusion

48. The proposal would represent inappropriate development in the Green Belt and would visually harmfully affect openness; this should be given substantial weight. Further, it would represent the urbanisation of a rural area, without justification would result in the loss of an employment site, would not provide smaller dwellings as required by development plan policy and would have insufficient parking for the convenience of residents and visitors. I give these factors significant weight.
49. The proposal would have a neutral effect on heritage matters and would provide a moderate benefit of the provision of seven dwellings.
50. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. It would be contrary to Policy CS3 of the CS which indicates that inappropriate development in the Green Belt will not be granted unless very special circumstances clearly outweigh the potential harm to the Green Belt. The proposal would be contrary to the development plan taken as a whole and I do not consider that there are sufficient reasons to outweigh the presumption of determining the application in accordance with those provisions.
51. For the reasons given above I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR