



Appeal Decision

Hearing Held on 25 May 2021

Site visit made on 26 May 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th July 2021

Appeal Ref: APP/H2265/C/20/3249796

Crown Point Nursery (also known as Reuthe's Nursery), Sevenoaks Road, Ightham, Sevenoaks, Kent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Claire Price on behalf of Reuthe's Events Limited against an enforcement notice issued by Tonbridge and Malling Borough Council.
 - The enforcement notice was issued on 26 February 2020.
 - The breach of planning control as alleged in the notice is: "Without planning permission, the construction of a new dwelling".
 - The requirements of the notice are:
To either:
 - 1) Make all the necessary alterations and modifications to the dwelling constructed so that it wholly accords with the planning permission approved under reference TM/13/01382/FL. These works shall include, but not be limited to the following:
 - Removal of the swimming pool and all associated facilities;
 - Removal of the balconies on both side elevations;
 - Removal of first floor windows above the approved sun room
 - Any excavation works must be filled in
 - In any event, all works undertaken must fully accord with drawing numbers X01 Rev C, X02 Rev C and X03 Rev C, appended to this Notice.
 - or,
 - 2) Demolish the existing building identified on Plan Numbers 1450 P 120 01 A and 1450 P 120 02 A, appended to this Notice, and remove all arising's to an authorised place of disposal.
 - The period for compliance with the requirements is 18 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a new dwelling at Crown Point Nursery (also known as Reuthe's Nursery), Sevenoaks Road, Ightham, Sevenoaks, Kent referred to in the notice and subject to the conditions set out in the attached schedule.

Preliminary Matters

Background

2. The appeal dwelling is located within an area of land that forms part of a wider land ownership to a long established horticultural nursery business. That company (incorporated in 1930) is now owned by the appellant. A related company, Reuthes Events limited, incorporated in 2018, is also owned and run by the appellant, to assist with the diversification and management of her business activities at the nursery. The appeal site, and the nursery and garden grounds of which it forms part, are located within the Green Belt.
3. Planning permission was granted for the erection of new agricultural/nursery dwelling and demolition of existing buildings¹. The appellant accepts that the development was not built in accordance with this permission, which resulted in the serving of the enforcement notice.

The Notice

4. During the hearing I raised the question whether the description of the allegation in the enforcement notice is correct. In response, a number of other descriptions were mentioned referring to the swimming pool in the basement and the ancillary horticultural use at ground floor level. However, the description of a 'dwelling' adequately describes the whole building, including the swimming pool in the basement, and the fact that certain parts of the ground floor are also used in connection with the nursery does not change that. With regard to the use of the pool as a 'leisure' use, during the hearing the appellant explained how the pool had been used in the past by members of the community. However, it was clear that it had only been used infrequently on an ad hoc basis, mainly by 'parent and toddlers' living nearby. Thus, given the infrequency of its use, this would not form any separate primary use.
5. The appellant states that compliance with Option 1 of the enforcement notice would grant a planning permission for a dwellinghouse (under the provisions of section 173(11) of the Act) which would be unencumbered by any of the planning conditions which were imposed on the 2014 planning permission², or the Planning Obligation³. The appellant also argues that the 2014 permission is so different from the development as built that it has not been implemented and the time for lawfully implementing it has expired. On this basis, it is argued that compliance with Option 1 would allow a dwelling to remain on site and occupied by a person not employed or last employed in agriculture.
6. However, the fact that the as-built scheme is different does not necessarily mean that the planning permission has expired. The relevant question is whether or not it began (section 91 of the Act). Section 56(2) and (3) of the Act, provide that development shall be taken to be begun for the purposes of ss91 and 92 on the earliest date on which any material operation comprised in the development begins to be carried out. 'Material operations' are defined in s56(4) of the Act as including: the digging of a trench [s56(4)(b)], and any work of demolition of a building [s56(4)(aa)]. Case law has established that works undertaken solely to keep a planning permission alive, when the

¹ Council Ref: 13/01382/FL for approved 20 May 2014.

² Council ref: TM/13/01382/FL

³ Dated 15 May 2014 pursuant to s.106 of the Town & Country Planning Act 1990 ('the 1990 Act').

developer has no intention of proceeding further at that time, can suffice to initiate development.

7. In this regard, the signed statement of common ground (SOCG) states that the 'as built' dwelling is built in a similar location as the previously approved dwelling (and as demonstrated on the submitted block plan where part of the approved scheme overlaps the as-built scheme). Although the overall foundation trench that was built would not match the approved building footprint, parts of it would contain parts of the foundations of the dwelling 'as built', in accordance with s56(4)(b) of the Act. Significant parts of the ground works would relate to the original planning permission and be substantially usable in the permitted building. The demolition of existing buildings on the site would also constitute a 'material operation' [s56(4)(aa)].
8. Furthermore, all the necessary pre-commencement conditions were discharged before the planning permission was due to expire on 20 May 2017. A copy of the relevant discharge of conditions decision notice was provided during the hearing⁴. Therefore, based on all of the evidence before me, I consider, on the balance of probabilities, it is more likely than not that the original permission had commenced before the permission was due to expire.
9. Option 1 of the notice allows compliance with the notice by making all the necessary alterations and modifications to the dwelling constructed so that *"it wholly accords with the planning permission approved under reference TM/13/01382/FL"*. That requires compliance with the planning permission as a whole, which includes the conditions and obligations. As such, given my view that the planning permission is extant, I do not agree with the appellant's argument that Option 1 of the notice under-enforces.

Revised National Planning Policy Framework

10. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and I have taken account of any responses from them in my determination of the appeal. The changes to the Framework do not materially alter the policies within the Framework most relevant to this appeal.

Section 106

11. Prior to the hearing, the appellant submitted two unsigned unilateral undertakings (UU) under Section 106 of the Act, one for the ground (a) appeal and one for the ground (f) appeal. These were discussed at the hearing and I allowed a short amount of time after the hearing for these documents to be signed. The signed versions, dated 3 June 2021, were received on 8 June 2021. The agreements made include a number of obligations to be made to the Council. I return to this matter below. As two parties (the appellant and the mortgage lender) were required to sign the agreements and due to the limited timescales and the Covid-19 restrictions, these have been provided in counterparts.

⁴ Council ref: TM/17/00472/RD relating to the approval of conditions 3 (materials), 4 (curtilage), 8 (levels), 9 (vehicular access), 11 (archaeological watching brief) and 12 (sustainable measures) submitted pursuant to planning permission TM/13/01382/FL (Erection of new agricultural/nursery dwelling and demolition of existing buildings), approved on 5 May 2017.

The Appeal on Ground (a) and the Deemed Planning Application (DPA)

Main Issues

12. The main issues are:

- 1) whether the development amounts to inappropriate development in the Green Belt;
- 2) the effect of the development on the openness of the Green Belt; and
- 3) if the development is inappropriate, whether harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances needed to justify the development.

Whether inappropriate development in the Green Belt

13. National policy on Green Belt development is set out in Part 13 of the National Planning Policy Framework 2021 (Framework). Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Of particular relevance to this appeal is Paragraph 149 which states that the construction of new buildings is inappropriate development in the Green Belt subject to a number of exceptions.
14. Reference has also been made to Policy CS3 of the Tonbridge and Malling Borough Core Strategy, 2007 (CS), which is consistent with the Framework and states that National Green Belt Policy will be applied generally to the west of the A228. Accordingly, I have assessed this appeal based upon the Green Belt policies contained in the CS and the Framework.
15. The parties agree that the new dwelling would not fall within any of the exceptions set out in paragraphs 149 or 150 of the Framework. I have no reason to take an alternative view and therefore the starting point is that the development is inappropriate development which, by definition, is harmful to the Green Belt.

Effect on the openness of the Green Belt

16. Paragraph 137 of the Framework states that 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 Courts have held that openness includes both visual and spatial dimensions.
17. The development results in a sizeable detached two storey (over basement) dwelling, built on a substantial plot in an area of the site which was largely free of built form. In this respect, there has been an adverse impact on the spatial aspect of Green Belt openness.
18. During my site visit, I observed that the dwelling is largely surrounded by dense vegetation, being contained within the verdant woodland landscape setting that characterises this part of the countryside. Nevertheless, I also observed towards the rear of the property there is a gap in the vegetation which allows some glimpsed distant views of the dwelling from adjacent land and a bridleway. However, the external facades of the building comprise a material palette, made up of timber cladding and painted render to the rear elevation which allows the

building to sit comfortably within the surrounding woodland setting without being unduly prominent. I am therefore satisfied that the dwelling is not visually prominent from the adjacent land and bridleways where it could be glimpsed through a gap in the well established woodland vegetation or during the winter months when deciduous trees would not be in leaf.

19. In both spatial and visual terms, the dwelling affects the openness of the Green Belt. Overall, I consider that the harm caused to the openness of the Green Belt would be a moderate one.

Other considerations

20. The Framework allows for isolated homes in the countryside where there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside [paragraph 80(a)]. The dwelling is for the proprietor and freehold owner of the nursery site, and similar to the extant permission the appellant is willing to accept a condition to ensure that the dwelling is a tied-agricultural-workers dwelling. Although the dwelling has changed design since the original permission, the principle of a tied dwelling (secured by a condition) has already been assessed in the original approved scheme and therefore remains acceptable in principle.
21. The Council's statement of case originally raised concerns that the business has diversified its operations since 2014 and questioned whether the primary use remains as a horticultural nursery. In response to this, prior to the opening of the hearing, the appellant submitted the Clifford Roberts Accounts Report, dated 15 January 2021. This report outlines that the major proportion of income generated from the appeal site comes from plant sales and other nursery related activities. Based on the information contained within this accounts report, which was not disputed by the Council during the hearing, I agree with the appellant that the primary use of the site remains as a horticultural nursery, and that the other activities carried out are ancillary. Furthermore, the Council agreed during the hearing that there remains an essential need for a dwelling on this site. Therefore, in terms of paragraph 80(a) of the Framework, I am satisfied there remains an essential need for the business to have a worker/proprietor living on the site. The ability of the development to satisfy this need attracts substantial weight.
22. The original planning permission and Option 1 in the notice amount to a 'fallback position' for the appellant. I have no reason to doubt that the appellant would revert to the original scheme in the event of the appeal on Ground A failing. It is therefore necessary to consider the effect of the original permission on the Green Belt and how this compares with the as-built scheme'.
23. The dwelling 'as built' has a larger floorspace (493sq.m) than the approved scheme (254sq.m). However, the majority of this increase is at basement level which comprises 181sq.m⁵, which in my view would be localised in impact, particularly given that it is not visible from any public vantage points nor adjacent land. In this respect, the basement's contribution to the visual aspect of 'openness' of the green belt is very modest. In terms of the built footprint at ground floor level, the as built dwelling is slightly larger than the original scheme design by only 13%. The difference in floor space at ground and first

⁵ Figures taken from the appellant's hearing statement.

floor levels between the approved and 'as built' dwelling is 58 sq.m, meaning that the as built dwelling is approximately 19% larger on these floors than the original permission.

24. Based on the above, the Council's appeal statement raises concerns that the development is no longer a 'modest' rural worker dwelling, and that the value of the 'as built' dwelling exceeds what would be affordable for a typical agricultural worker. In support of this the Council have submitted a report prepared by chartered surveyors Batcheller Monkhouse⁶ to provide a valuation of the property. The report finds that the valuation of the property is estimated to be £2.6 million in its current condition, without being constrained by an agricultural occupancy condition, or £1.82 million if such a condition was re-imposed. Similar concerns are also shared by a third party who also states that the property is currently being marketed for sale at £3 million.
25. However, the approved scheme was also a sizeable detached dwelling comprising circa 254sq.m at ground and first floor levels, with a largely similar footprint to the approved scheme, albeit without the basement. Whilst I agree with the Council that the 'as built dwelling' is not a 'modest sized' dwelling, based on the floor plans submitted, I do not consider that the extant scheme amounted to a modest rural agricultural dwelling either. In this regard, the original dwelling would also be expensive and there is no evidence before me which shows how much more valuable the 'as built dwelling' is. Furthermore, the Council also stated during the hearing that there is no policy with regard to the size of a rural workers dwelling, thus there is no specific policy conflict. I therefore attach little weight to these specific concerns that it's not a modest dwelling and regarding the value of the house.
26. I accept that the development is now larger than that which was previously approved. Nevertheless, the development is in a similar position to the original approval. Furthermore, owing to the appeal site's location within this 11 acre estate, largely surrounded by the dense vegetation combined with the development's material palette, which compliments its woodland setting, in reality, the increased size and bulk of the building is not discernible in the overall context of the appeal site. As such, I do not consider that current dwelling results in any greater harm to the green belt than the original approved scheme. Given that the dismissal of this appeal would likely result in the current dwelling being replaced with the original approved scheme, this is an important material consideration.
27. In support of the current development, the appellant's personal circumstances have been raised during this hearing. However, the extant permission and option 1 of the notice allows another house to remain on site to support the needs of the business, and I have no substantive evidence to demonstrate that this alternative option would not be followed if the appeal were to fail or that it would not meet the appellant's needs. I therefore give no weight to this matter.

Area of Outstanding Natural Beauty (AONB)

28. Whilst not a reason for refusal, I am required to consider the effects of the development on the North Downs Area of Outstanding Natural Beauty (AONB). In particular, paragraph 176 of the Framework states that great weight should

⁶ Dated 27 November 2020

be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.

29. The dwelling is sizeable. However, it is situated within a substantial plot, and whilst it is on a relatively high point of the site, I observed during my site visit that any views of the dwelling from adjacent land and bridleways are limited due to the existing dense vegetation which characterises this part of the AONB. Whilst it is acknowledged that the building has increased in size and bulk when compared to the extant scheme, the majority of the increase is at basement level, which is not visible from any public vantage points or adjacent land. The building is constructed with predominantly timber cladding and render which, as previously stated, harmonises with the surrounding woodland landscape. In this context, the dwelling preserves the area's character and appearance.
30. I therefore conclude that the development does not harm the natural beauty of the AONB as it preserves the rural character of the locality and in turn the natural beauty of the area. It therefore complies with Paragraph 176 of the Framework. However, this is of neutral consequence in the overall planning balance.

Planning obligations

31. The appellant has completed a UU to provide the Council with further legal certainty regarding the occupation of the dwelling and proposing certain measures to enable control over future development at the appeal site under the Appellant's ground (a) appeal. I have considered the UU in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure (CIL) Regulations 2010 and paragraph 57 of the Framework. They relate to the following matters.
32. Sections 1 and 2 of schedule 2 of the submitted UU ensures that the occupants of the dwelling would be employed in or by the business on the site, and in agriculture. This is necessary given that the site is located in the Green Belt and countryside where 'inappropriate development' would not normally be permitted. On the basis, I am satisfied that this obligation would be fairly and reasonably related to the development and that it passes the statutory tests.
33. Section 3 of schedule 2 of the submitted UU seeks to mitigate the loss of openness which arises from the dwelling by demolishing the following horticultural buildings and structures identified on Plan 2:
- a) Gardeners' Workshop denoted as building 'H', equating to 95.98 sq.m of floor space;
 - b) Glasshouse denoted as building 'G', equating to 58.09 sq.m; and
 - c) A Polytunnel which is located next to building 'C'.
34. However, whilst this would result in the physical removal of structures on the wider nursery site, these comprise predominantly single storey low lying buildings and greenhouses in agricultural use and therefore are 'not inappropriate'. As such, I do not consider the proposed removal of these buildings/structures would compensate for the size and bulk of the 'as built' dwelling and are not necessary to make the development acceptable in planning terms. Accordingly, I do not find that section 3 of the of schedule 2 of

the UU would satisfy the necessary statutory tests and cannot be taken into account in the grant of planning permission.

35. Section 4 of Schedule 2 the UU deals with the residential curtilage of the dwelling. Whilst I consider that this obligation would meet the relevant tests, the parties agreed under the draft set of conditions submitted before the hearing, that this matter could be satisfactorily dealt with by condition (see below). As such section 4 of the UU is not necessary to make the development acceptable in planning terms and cannot be taken into account in the grant of planning permission.
36. Section 5 of Schedule 2 the UU deals with the removal of the following permitted development rights of The Town and Country Planning (General Permitted Development) Order 2015 (GPDO):
- (a) Classes A, B, D, E and F within Part 1, Schedule 2 (development within the curtilage of a dwellinghouse);
 - (b) Class R of Part 3, Schedule 2 (agricultural buildings to a flexible commercial use)
 - (c) Class A of Part 6, Schedule 2 (agricultural development on units of 5 hectares or more); and
 - (d) Classes A and E of Part 7, Schedule 2 (non-domestic extensions, alterations)
37. The appellant considers the removal of the above permitted development (PD) rights for the whole site would result in the "sensible safeguarding" of the appeal site in future, by ensuring there would be no further 'unchecked' harm to the openness of the green belt, nor to the AONB and these measures would provide the Council with further reassurance on the uses found within the site.
38. Parts (b), (c) and (d) of Section 5 relates to the permitted development rights for existing the horticultural business. However, the Framework makes clear that buildings for agriculture are not regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt. Furthermore, it is unclear what benefit the removal of these particular rights would result in and I note that the Planning Officer stated during the hearing that the Council would find it difficult to resist future planning applications which support the needs of the agricultural business. As such, I do not consider that removal of permitted development rights listed under sub-heading (b), (c) and (d) of section 5 of Schedule 2 of the UU would make the development acceptable in planning terms. Accordingly, I find these parts of the obligation would not satisfy the relevant tests and have not been taken into account in the grant of planning permission.
39. However, 5 (a) of Schedule 2 the UU referring to Classes A, B, D, E and F within Part 1, Schedule 2 (development within the curtilage of a dwellinghouse), is necessary to ensure that there is no further unchecked harm to the openness of the Green Belt and the AONB. I find that covenant 5 (a) is directly related to the development and fairly and reasonably related in scale and kind to the development. As a result, this part of the obligation complies with Regulation 122 of the CIL Regulations and can be taken into account in the grant of planning permission. However, this is of neutral consequence in the overall planning balance.

40. Covenants 6 and 7, deals with the use the swimming pool by community and charitable organisations and covenants 8 and 9 covers access to the gardens and the creation of a 'permissive path'. However, I am not convinced that these obligations are necessary to make the development acceptable in planning terms. Indeed, during my site visit I observed that there was an existing path which already provides access across the nursery grounds, and therefore the proposed permissive path provides no benefit. Accordingly, I do not find these parts of the obligation satisfy the relevant tests and also cannot be taken into account in the grant of planning permission.

Green Belt Balance

41. The development is inappropriate development in the Green Belt. In addition, I have found that the dwelling also has a moderate impact on the openness of the Green Belt. The Framework establishes that substantial weight should be given to any harm to the Green Belt, and development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.

42. Weighed against the harm is the agreed essential need for the horticultural business to have a worker/proprietor living on the site, and the ability of the development to satisfy this need attracts substantial weight. Of course, that need could also be met by the permitted dwelling (option 1 in the notice requirements). However, I have concluded that the dwelling that has been built causes no additional harm to the Green Belt compared to the permitted one. Consequently, given the clear fallback available to the appellant, no additional planning harm arises from the as-built scheme and the planning balance is the same.

43. 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, very special circumstances do exist to justify inappropriate development in the Green Belt. As a result, I therefore conclude that the dwelling complies with both the Framework and the CS taken as a whole. I have taken into account all the other matters raised, including representations from third parties, but these do not alter my conclusion. For the reasons given above, and having considered all other matters raised, the appeal is allowed.

Conditions

44. I have had regard to the planning conditions suggested by the parties prior to the hearing. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance, and in the interest of accuracy and clarity I have undertaken some minor editing.

45. A tied agricultural worker's condition is required given that the site is located in the Green Belt and countryside where 'inappropriate development' would not normally be permitted. Whilst this is already included within the UU, I have included this for clarity. A condition relating to the residential curtilage of the dwelling is required to limit the extent of the dwelling and protect the openness of the green belt. An external lighting condition is also attached to ensure that there would be no further additional external lighting installed to protect the character and appearance of the AONB.

46. The appellant has suggested a condition which seeks to ensure that parts of the ground floor (2 x offices and a kitchen), as shown in light green on plan 1450 P 110 02 A, are only used for purposes ancillary to the operation of the nursery to limit the extent of the dwelling and protect the openness of the Green Belt. However, these rooms do not form any separate primary use, and it is not clear to me that the condition would result in any planning benefits. Accordingly, I find this condition is not necessary.
47. Additional conditions have also been suggested by the appellant which relates to the removal of certain permitted development rights and the demolition of certain horticultural buildings/structures on the wider nursery site. However, this has already been dealt with under the s106 section of this decision letter and it is not necessary to consider these further.

Conclusion

48. For the reasons given above the appeal succeeds on ground (a). I shall grant planning permission for the development described in the enforcement notice. The appeal on grounds (f) and (g) do not therefore fall to be considered.
49. Since I have allowed the appeal on ground (a), I have not taken into account the UU for the ground (f) appeal.

R. Satheesan

INSPECTOR

Schedule of Conditions

- 1) The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act 1990, or a dependant of such a person residing with him or her, or a widow or widower of such a person.
- 2) The residential curtilage of the dwelling hereby permitted shall only include the land shown outlined in a broken red line on Plan 3, submitted with the Planning Obligation by way of Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990, dated 3 June 2021. No domestic paraphernalia shall be located, or stored overnight, outside of this curtilage.
- 3) There shall be no additional external lighting installed, except in accordance with a scheme of external lighting which has been submitted to and approved by the Local Planning Authority.

APPEARANCES

FOR THE APPELLANT:

Claire Price, Appellant

Megan Thomas QC, Six Pump Court

Mike Washbourne, Director of Planning at Savills

Edward James AssocRTPI, Planner at Savills

FOR THE LOCAL PLANNING AUTHORITY:

Adem Mehmet MRTPI, Senior Planning Officer for Tonbridge and Malling Borough Council

INTERESTED PERSONS:

John Francis, Neighbouring resident

Documents submitted during the hearing

1. A copy of Decision Notice, ref: TM/17/00472/RD dated 5 May 2017
2. Case Summary of R. (on the application of Embleton Parish Council) v Northumberland CC.
3. A copy of Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404.
4. A copy of Policies DC3 and DC5 of the Tonbridge and Malling Development and the Environment Development Plan Document Plan (2010).

Documents received after the hearing

1. Two signed unilateral undertaking (UU) under Section 106 of the of the Act, (one for the ground (a) appeal, and one for the ground (f) appeal).
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