



Appeal Decision

Site visit made on 6 December 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2021

Appeal Ref: APP/M3645/W/21/3272500

Beech Farm, Beech Farm Road, Warlingham, Surrey CR6 9QJ

- 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 Mrs A Bisson of Knightwood Trust Farm Ltd against the decision of Tandridge District Council.
 - The application Ref TA/2019/1077, dated 6 June 2019, was refused by notice dated 21 October 2020.
 - The development proposed is described as conversion of buildings to provide 2 x 4 bed, 2 x 3 bed and 1 x 2 bed houses with associated parking, landscaping, package treatment plant and removal of hardstanding (Alternative development to that approved under reference TA/2016/553).
-

Decision

1. The appeal is dismissed.

Background & Procedural Matters

2. The appeal site benefits from a planning permission (Ref TA/2016/553) for the conversion of buildings and erection of extensions to provide 5 houses with associated parking, landscaping, and removal of hardstanding, dated 4 October 2016. It permits conversions, alterations, and some extensions to the existing buildings, which the Council concluded was not inappropriate development. The appellant has confirmed that conditions have been discharged and the permission has been implemented. The Council does not contest this point.
3. This appeal proposal differs from the previously approved development primarily due to the provision of low profile photovoltaic panels on the roofs which do not project above the roof plane, and the integration of an additional area of land to the north west of the site to include the installation of a package treatment plant (PTP). Much of the PTP would be below ground level except for the access hatch. The Council raises no objection to the PTP or the panels. I have considered the appeal on this basis.

Main Issues

4. The main issues are:
 - the effect of the proposed development upon protected species;
 - whether the proposed development would be inappropriate development in the Green Belt;

- the effect of the proposed development upon the openness of the Green Belt;
- the effect of the proposed development upon the character and appearance of the area; and,
- if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Protected species

5. The appellant's Preliminary Ecological Appraisal (PEA) and Bat Emergence & Activity Surveys assess the implications of the development for on-site habitats and protected species. In relation to most habitats and species there is no objection raised subject to the imposition of suitable planning conditions. The Council's reason for refusal relates to concerns in relation to evidence to demonstrate appropriate mitigation, compensation, and enhancements to ensure there is no adverse impact upon any population of reptiles.
6. Reptiles are protected species under the Wildlife and Countryside Act 1981 (the WCA). There is also an obligation under the Natural Environment & Rural Communities Act (2006) upon local authorities to restore or enhance the population. Circular 06/2005 is referenced in paragraph 179 of the National Planning Policy Framework (2021) (the Framework). It advises it is essential that the presence or otherwise of protected species, and the extent that they may be affected is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making a decision. Therefore, the matter cannot be dealt with by planning conditions.
7. The PEA identifies the tall ruderals and scrub, and brash and rubble piles that collectively cover a significant proportion of the site, could provide foraging, commuting and refuge opportunities for reptiles. Much habitat would be lost as a consequence of this development. The PEA explains the site is also surrounded by fields many of which appeared to have wide margins potentially suitable for reptiles. Therefore, there is a reasonable likelihood that protected species could be present. The PEA recommends a full reptile survey be carried out to determine their presence, population, and distribution. Following this any appropriate mitigation would need to be determined.
8. I have not been provided with a reptile survey, so their presence or absence and the extent and distribution of any population is not clear. Consequently, it is not possible to determine the nature or deliverability of any mitigation, compensation, or enhancements to ensure any population is protected or enhanced. While Natural England did not object to the application, its advice confirms it did not assess it for impacts upon protected species.
9. The condition attached to the 2016 permission requiring implementation in accordance with previously submitted ecological information is based upon information that is now 6 years old, so is out of date. It also relates to a development area that does not include the new north western area of this appeal site, which also comprises suitable habitat for lizards. Furthermore, building out the 2016 permission does not negate the need for a developer to

meet statutory duties in respect of protected species, and it is not even clear if that extant permission could be built out with reference to obligations under the WCA. Therefore, the existence of that permission attracts limited weight.

10. For the reasons set out above I cannot be certain the proposed development would not result in unacceptable harm to protected species. Therefore, the development conflicts with the aims of Policy CSP17 of the Tandridge District Core Strategy (2008) (the TDCS) and Policy DP19 of the Tandridge Local Plan Part 2 (July 2014) (the TLP). These require development protects biodiversity, and that permission for development directly or indirectly affecting protected species will only be permitted where it can be demonstrated the species would not be harmed or appropriate mitigation measures can be put in place.

Inappropriate development

11. The appeal site is located within the Green Belt. Paragraph 147 of the Framework states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Paragraphs 149 and 150 of the Framework identify exceptions to inappropriate development in the Green Belt. At paragraph 150d) and e) list exceptions as including the re-use of buildings and material changes in the use of land, provided such development preserves openness and does not conflict with the purposes of including land within it.
12. Policy DP10 of the TLP states that inappropriate development will only be permitted where very special circumstances exist that outweigh any potential harm. In so far as they are applicable to this proposal, the relevant criteria of Policy DP13 of the TLP in relation to new buildings and re-use of buildings include the same criteria as set out in the Framework. The approach of these policies is consistent with the Framework in so far as they require the application of national Green Belt policy.
13. The Council's objection relates to the alleged use of the land as a garden area with resulting additional paraphernalia, by reason of general communal use and being specifically integrated as part of a garden for plot 4, constituting inappropriate development. The plans show no development other than the PTP for which there is no disagreement between the parties. The use as a communal landscaped area would not conflict with the purposes of including land within the Green Belt. Therefore, my findings in relation to openness will determine whether the proposals would amount to inappropriate development.

Openness

14. The additional area of land is labelled on the plans as a communal landscaped area and not a residential use, so such a use would require planning permission in the future, and a legal agreement is not necessary to secure this. The area would be surrounded by and separated from any residential plots by walking, parking, and circulation areas. Therefore, it could not be readily integrated into any private residential plots.
15. Each dwelling would have its own adequately sized private residential garden areas. Having regard to the plot sizes and layout, I see no reason why any installation or storage of paraphernalia would take place on the land. The indicative landscaping scheme shows the retention and management of the existing mature trees around its perimeter with further tree and hedgerow

planting. Therefore, the area would be significantly shaded. It is also close to a frequently used highway junction and it would accommodate the PTP. Therefore, I see no reason why residents would desire domesticating or using the land as a communal area. Based upon the evidence before me, the proposals would not be harmful to the openness of the Green Belt.

16. For the reasons set out above the proposals would not be inappropriate development. Therefore, they would not conflict with Policies DP10 and DP13 of the TLP, which amongst other things state inappropriate development will only be permitted where very special circumstances exist, and that new buildings and re-use of buildings should preserve openness. As the development is not inappropriate development and would not adversely affect openness, it would not conflict with paragraphs 149 and 150 of the Framework, which have similar objectives.
17. As I have concluded the proposals would not be inappropriate development, there is no need for me to consider whether very special circumstances exist.

Character and appearance

18. The north western parcel of land outside the mobile communications compound is currently given over to mature tree and scrub cover. Its well vegetated appearance makes a positive contribution to the character and appearance of the area. The location close to Beech Farm Road and Limpsfield Road means the land is noticeably visible from sections of both carriageways to passing traffic and part of the Limpsfield Road footway.
19. The proposed PTP could be located so as not to significantly encroach upon Root Protection Areas. The retention of the existing trees which I am informed are protected, a construction method statement and tree protection measures, could all be secured by suitably worded planning conditions, so the future health of the trees would not be prejudiced. Much of the scrub required to be removed is some distance behind the site boundary. Its replacement with landscaping that would be managed and maintained around the PTP could be secured by means of a suitably worded planning conditions.
20. For reasons set out the proposed and future use of the land would not be likely result in any paraphernalia on the land and its function as a landscaped area is unlikely to have any negative effects upon its character and appearance. Therefore, the proposed development would not be harmful to the character and appearance of the area. It would not conflict with Policies CSP18 and CSP21 of the TDCS or Policy DP7 of the TLP. In combination and amongst other things these policies seek to ensure that development is of a high standard of design that must reflect and respect the character, setting, and local context, including the local landscape character.

Other Matters

21. The appellant sets out points in relation to the Council's handling of the application. This is a matter that would need to be pursued with the Council in the first instance. In determining this appeal, I have only had regard to the planning merits of the case.

Planning Balance

22. The appellant informs me the Council can only demonstrate a deliverable housing land supply of 1.9 years and has received a Housing Delivery Test measurement of 50%. I see no evidence this is incorrect. Paragraph 11d) states that in such circumstances, the policies most important for determining the application are out-of-date, and permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
23. Even though the need for additional deliverable housing within the District is acute, the social benefits of 5 additional dwellings would be a moderate benefit, attributed moderate weight. The development would provide a moderate temporary economic benefit during construction and some small on-going spend in the local economy once occupied. There are biodiversity enhancements recommended within the PEA. The nature and extent of opportunities for these are such that they are attributed limited weight in favour of the scheme, although this does not overcome concerns in respect of reptiles.
24. The indicative landscape proposals differ from the block plan as they show the mobile communications equipment would not be present, although its removal is not included within the description of development. It is understood that the appellant is working with the operator of the mast in respect of an alternative site. However, it is not clear where this would be in relation to the existing site, the area, and the Green Belt. Therefore, having regard to the Green Belt and character and appearance of the area, if I were to assume the mast was to be removed, the effects of this are attributed limited weight in favour of the scheme. Overall, the benefits associated with the development are attributed moderate weight in favour of the scheme.
25. Compliance with policies in respect of other matters in relation to the Green Belt, design, character and appearance, as well as resource and energy efficiency, highway safety and accessibility, would all be neutral matters in the planning balance.
26. However, I cannot be certain that the proposed development would not have an unacceptably harmful effect on protected species. This is attributed substantial weight against the proposed development. The harm identified significantly and demonstrably outweighs the benefits of the development, when assessed against the policies of the Framework taken as a whole. Therefore, the appeal should not succeed.

Conclusion

27. The proposed development would be contrary to the development plan read as a whole. There are no other considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR