



Appeal Decisions

Site visit made on 18 July 2022

by **S Harley BSc(Hons) M.Phil MRTPI ARICS**

an Inspector appointed by the Secretary of State

Decision date: 26th July 2022

Appeal A Ref: APP/X0360/W/21/3287734

Hare Hatch Sheeplands Nursery, London Road, Twyford, RG10 9HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Hare Hatch Sheeplands against the decision of Wokingham Borough Council.
- The application Ref 211085, dated 26 March 2021, was approved on 12 August 2021 (issued 15 October 2021) and planning permission was granted subject to conditions.
- The development permitted is *"Application to vary condition 1 of planning consent 192018 for the full application for the change of use of three existing nursery glasshouses into events area relating to the existing nursery. Condition 1 refers to temporary permission and the variation is to extend temporary permission for two years."*

The conditions in dispute are Condition No 3e) and Condition No 3g) which state that:

"e) No goods for sale shall be displayed and no retail sales shall take place anywhere on the site other than from within the approved retail areas (i.e. the farm shop and the retail nursery as specified in planning permissions F/2007/0225, F/2008/2295, 172161, 173316, 211086 with the types of goods restricted by respective conditions in those permissions and

g) The use is for events only and this permission does not permit the display or sales of goods within the events floor area shown on plan SK-005 Rev A, dated 15 August 2019."

- The reason given for Condition No 3 is: *"In granting this permission, the local planning authority has had regard to the very special circumstances of the case, being its location within a horticultural nursery and within the Green Belt and in the interest of the amenity of the area. Relevant policy: National Planning Policy Framework Section 13, Core Strategy policies CP1, CP3 and CP12 and Managing Development Delivery Local Plan Policy TB01."*
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Appeal B Ref: APP/X0360/W/21/3282720

Hare Hatch Sheeplands Nursery, London Road, Twyford, RG10 9HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Hare Hatch Sheeplands Nursery against the decision of Wokingham Borough Council.
- The application Ref 211086, dated 26 March 2021, was approved on 13 August 2021 and planning permission was granted subject to conditions.
- The development permitted is application for *"Full application for the continued use of existing sales area permitted temporarily under 173316 and change of use to include an additional sales area."*
- The condition in dispute is No 3 which states that: *"A full financial report and business plan shall be submitted to the Local Planning Authority on or before 14 March 2022. The report shall detail income and expenditure, future income forecasts and the business plan shall demonstrate that a viable horticultural business can be operated from the site prior to March 2023 without any retail floor space. In the absence of the submission of such a report and plan the retail use hereby permitted shall discontinue by 14 March*

2022. The plan detailing a viable horticultural business shall be implemented prior to March 2023."

- The reason given for the condition is: *"To allow the local planning authority an opportunity to assess the effect of the retail use on the Green Belt and to allow a review of financial viability of the Hare Hatch Sheeplands business on the surrounding properties."*
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Procedural Matters

1. The proposal for planning Ref 211085 is described on the planning application form as *"Application Submitted Under Section 73 of the Town and Country Planning Act 1990 (as amended) for an Amendment to Planning Application Reference: 192018 for the Change of Use of Three Existing Nursery Glasshouses into Events Area Relating to the Existing Nursery."* On the Notice of Approval of Planning Permission the Council described the proposal as set out in the banner heading above. The proposal for planning Ref 211086 is described on the planning application form as *"Application for continued temporary change of use to garden shop with additional outdoor display and sales area for trees and shrubs."* On the Notice of Approval of Planning Permission the Council described the proposal as set out in the banner heading above.
2. It is the conditions set out on the Notices of Approval of Planning Permission that are disputed so I have used the descriptions from them in my Decisions below although to avoid discrepancy I have removed the reference to two years in respect of Appeal A (see discussion below).
3. There are two Conditions No 3 on the Notice of Planning Permission Ref 211085. It is clear from the evidence that Appeal A relates to the Limitations of Use Condition and that the Approved Details Condition should be numbered 2 so I have considered Appeal A in this way.

Decision

4. Appeal A is allowed and the planning permission Ref 211085 for *"Application to vary condition 1 of planning consent 192018 for the full application for the change of use of three existing nursery glasshouses into events area relating to the existing nursery. Condition 1 refers to temporary permission"* at Hare Hatch Sheeplands Nursery, London Road, Twyford, RG10 9HW granted on 12 August 2021 by Wokingham Borough Council, is varied by deleting Condition No 3e) and Condition No g) and substituting for them the 2020 Condition 3e) and the appeal Condition 3g) as set out in the attached Schedule.
5. Appeal B is allowed and the planning permission Ref 211086 for *"Full application for the continued use of existing sales area permitted temporarily under 173316 and change of use to include an additional sales area"* at Hare Hatch Sheeplands Nursery, London Road, Twyford, RG10 9HW granted on 13 August 2021 by Wokingham Borough Council, is varied by deleting Condition 3.

Applications for costs

6. A joint application for full costs in respect of both appeals has been made by Hare Hatch Sheeplands. Those applications are the subject of a separate Decision.

Preliminary Matters

7. There are two appeals relating to different parts of the Hare Hatch Sheeplands Nursery (the HHSN). I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the schemes together, except where otherwise indicated.
8. There have been a number of proposals relating to HHSN: a somewhat piecemeal approach to the HHSN site as a whole. On 9 March 2022 the Planning Committee resolved to grant planning permission Ref 214108 for the redevelopment of HHSN as a new garden centre including replacement cafe, demolition of existing glasshouses, and retention of existing farm shop and site office/toilet block. I am advised that draft conditions and the terms of a legal obligation have been agreed and it is anticipated that planning permission will be granted in early August. As a result there now appears to be a very real prospect of the redevelopment of HHSN and this is a material consideration.

Main Issue

9. Paragraph 56 of the 2021 National Planning Policy Framework, (the Framework) advises that conditions should only be imposed where they are necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (the PPG) refers to this as the 'six tests'. It also emphasises that clear and precise reasons must be given for the imposition of every condition.
10. For both Appeal A and Appeal B the main issue is whether the disputed Condition(s) meet the six tests for imposing conditions.

Reasons

11. The PPG advises that it is the disputed conditions that are to be considered not the whole development. However, the background is helpful in understanding the necessity or otherwise of the disputed Conditions. The HHSN is within the Metropolitan Green Belt and the countryside for planning policy purposes. There is an extensive planning history for the overall HHSN site which comprises a large collection of greenhouses and buildings, originally a horticultural nursery but which now also includes a café, events area, garden and farm shop and it is evident that retail has become more dominant. A car park and service yard dominate the centre of the site.
12. New development is strictly controlled in the Green Belt. I consider the range and extent of events and sales referred are not ancillary or incidental to the horticultural nursey use. The outdoor element of the sales area with the items sold thereon result in a slight reduction in openness. The sales area and events also make HHSN busier manifesting in increased car parking associated with visitors, staff, event exhibitors and more deliveries also adversely affecting openness. I find that both the events use and the sales use would constitute inappropriate development in the Green Belt although because of the history of the site there would be a limited effect on openness and the erosion of the countryside.
13. The permissions granted for the events use and the sales use recognised this and sought to limit the effect on the Green Belt both by imposing time limits on the uses and by seeking to restrict the proliferation of retail uses.

Appeal A the events proposal

14. Planning permission was granted Ref 192018 on 12 March 2020 for an events area subject to conditions including a requirement to discontinue the use on or before 14 March 2022 and, amongst other things, Condition 3e) which stated that *"No retail nursery sales associated with the existing nursery use are permitted within the red hatched area in the approved site plan SK-005 Rev A."* (the 2020 Condition 3e)).
15. In granting planning permission Ref 211085 the Council imposed a Condition requiring the discontinuation of the events use on or before 14 March 2023 subject to a revised Condition 3e) (the disputed Condition 3e)) and an additional Condition 3g) (the disputed Condition 3g)).
16. The disputed Condition 3e) states *"No goods for sale shall be displayed and no retail sales shall take place anywhere on the site other than from within the approved retail areas ..."* In terms of display and sales this overlaps with the disputed Condition 3g) which states *"The use is for events only and this permission does not permit the display or sales of goods within the events floor area."*
17. Incremental changes from a wholesale nursery in 2002 to a mixed use have taken place at HHSN. I acknowledge the Council's wish to regulate events and retail uses that would not normally be acceptable in Green Belt and countryside locations and the intention of seeking to clarify the planning position for the HHSN site as a whole.
18. Nevertheless, and notwithstanding the letter dated 5 September 2019 which sought to explain the types of events envisaged, I consider it highly improbable and unreasonable to suppose that many exhibitors would wish to attend events with no goods being displayed for sale and no retail sales being possible. It would also be very difficult to enforce a distinction between the display of goods and the sale of goods. Accordingly I conclude the disputed Condition 3e) and the disputed Condition 3g) would fail the tests of reasonableness and enforceability.
19. Moreover, I consider that the phrase "anywhere on the site" in the disputed Condition 3e) is somewhat vague given that "the site" is not defined. I also consider that the imposition of restrictions at the disputed Condition 3e) relating to the wider HHSN site would not be directly relevant to the events development. Accordingly the disputed Condition 3e) would also fail the test of precision and relevance.
20. As part of its case for Appeal A the Council proposes that the wording of Condition 3e) reverts to that of the 2020 Condition 3e), with which the appellant has no dispute. The Council also proposes a substitute Condition 3g) *"No retail sales are permitted unless they are ancillary or incidental to the specific event being held."* (the appeal Condition 3g)). Whilst to some extent this states a lawful position in my view it serves the planning purpose of linking any sales to the specific event and is therefore necessary although as drafted it would lack precision in not defining the area to which the limitation applies.

Appeal B the retail proposal

21. The appeal decision Ref APP/X0360/W/18/3193969 (the 2019 retail appeal) allowed *"a temporary change of use of part of glasshouse and small outdoor*

area from plant growing to nursery related restricted sales". This was subject to, amongst other things, a condition requiring the use to cease on or before three years from the date of that Decision.

22. The appellant subsequently sought to extend the temporary permission. In granting planning permission Ref 211086 the Council permitted an extension of the temporary permission, until 14 March 2023 and added Condition 3 requiring a Business Plan (the disputed Business Plan Condition 3) as set out in the banner above.
23. I concur with my colleague's findings in the 2019 retail appeal that customers visiting a nursery expect to be able to buy related products and that a sales area selling these items would help safeguard the existence of the nursery and help the business grow. The Council is concerned that the additional financial information provided does not demonstrate that the horticultural business would grow or that the future of HHSN had been properly reviewed with the Council as envisaged at the time of the 2019 retail appeal Decision. Accordingly the Council imposed the requirement for a Business Plan.
24. As above I acknowledge the Council's wish to regulate events retail uses that would not normally be acceptable in Green Belt and countryside locations. In my experience in the case of new ventures a requirement for a Business Plan can serve a planning purpose of seeking to ensure that only viable enterprises become established in what would otherwise be inappropriate Green Belt and countryside locations.
25. However, I consider the requirement of the disputed Business Plan Condition 3 to demonstrate that a viable horticultural business can be operated from the site prior to 14 March 2023 without any retail floor space to be imprecise in terms of not explaining the extent of "the site" and unreasonable given the history of the HHSN and the permitted, ancillary and incidental sales that could take place. In addition the requirement that "*In the absence of the submission of such a report and plan the retail use hereby permitted shall discontinue by 14 March 2022*" would conflict with the period under Condition 2 for which permission has been granted.
26. Moreover, the reason for the imposition of the condition includes "*...to allow a review of financial viability of the Hare Hatch Sheeplands business on the surrounding properties*" the meaning of which is unclear and imprecise particularly as the Committee Report indicates that the HHSN does not have a significant impact on surrounding properties. Accordingly I find the disputed Business Plan Condition 3 would fail the tests of precision and reasonableness.
27. I have considered the alternative Condition 3 proposed by the Council during the appeal: "*A full financial report and business plan for Hare Hatch Sheeplands shall be submitted to and agreed in writing by the Local Planning Authority on or before 14 March 2023. The report shall detail income and expenditure and future income forecasts and the business plan shall demonstrate that in conjunction with the lawful café and farm shop uses (and any other temporary uses) within the Hare Hatch Sheeplands site, there is re-investment and re-establishment in an ongoing horticultural use on the site. In the absence of any meaningful attempt to re-invest and re-establish a horticultural use of the site the temporary retail use shall cease.*" (the appeal Business Plan Condition 3).

28. Given that plant and garden shop stock for the spring season is ordered in the preceding year the business is unlikely to be able to respond quickly to changing circumstances as stock will already have been ordered. Permitting a retail use but then requiring it to cease if another use is not viable, before the expiration of the permission, would create a significant degree of business uncertainty which would be unreasonable. In any case by virtue of being a temporary permission the retail use would have to cease in a set period of time unless further permission were to be granted. Accordingly I find that the appeal Business Plan Condition 3 would fail the tests of reasonableness and necessity.

Conclusion and Conditions

29. I conclude that for Appeal A the disputed Condition 3e) and Condition 3g) are not enforceable or reasonable and Condition 3e) is not precise or relevant. Accordingly the disputed Conditions do not meet the tests set out in the Framework and the PPG. I will allow Appeal A and substitute the 2020 Condition 3e) for the disputed Condition 3e) and the appeal Condition 3g) for the disputed Condition 3g) amended to refer to the approved plan as set out in the attached Schedule.
30. I conclude that for Appeal B the Business Plan Condition 3 is not necessary or reasonable and does not meet the tests set out in the Framework and the PPG. Appeal B should be allowed with the condition deleted. For the reasons given above I have not imposed the appeal Business Plan Condition 3.
31. The appeals do not relate to the Conditions specifying the length of time for which temporary permission is granted but I am empowered to attach modified versions of previously attached conditions. I acknowledge the Council considers a time limit until 14 March 2023 to be appropriate in both cases. However, in respect to application Ref 211085 there is a discrepancy between the description of development on the Notice of Approval of Planning Permission which refers to “...*variation is to extend temporary permission for two years*” and the time limit imposed by Condition 1. The appellant sought until 14 March 2024 and during the appeals requested a time limit that would coincide with the implementation period for the proposed re-development under planning Ref 214108.
32. Given the time that has elapsed since the applications were submitted I consider a longer time period than 14 March 2023 would be appropriate. As permission for planning Ref 214108 has not yet been issued the relevant dates could not coincide. I will allow two years from the date of these Decisions for Appeal A and Appeal B.
33. For Appeal A I have corrected the numbering of the conditions and removed duplication at Condition 3f). Otherwise I have imposed the conditions that were previously imposed on planning Refs 211085 and 211086 respectively.

S Harley

INSPECTOR

Appeal A Schedule of Conditions

- 1) The use hereby permitted shall be discontinued, all events associated with this permission shall cease and equipment associated with the events removed from the site on or before two years from the date of this Decision.
- 2) This permission is in respect of the site plan numbered SK-005 Rev A, dated 15 August 2019. The events use shall be carried out in accordance with the approved plans unless other minor variations are agreed in writing after the date of this permission and before implementation with the Local Planning Authority.
- 3) The events use, hereby approved, is limited by the following:
 - a) A maximum of 24 (consecutive or non-consecutive) days in any 12-month period
 - b) Events shall take place only between the hours of 8:30am and 5:30pm on any Monday to Saturday and between the hours of 10:30am and 4:30pm on Sundays
 - c) Except where events are proposed over two or more consecutive days, preparation is not to commence earlier than 90 minutes before opening, and all items are to be removed no later than 90 minutes after closing
 - d) It shall be carried out only in the red hatched area outlined in the approved site plan SK-005 Rev A
 - e) No retail nursery sales associated with the existing nursery use are permitted within the red hatched area in the approved site plan SK-005 Rev A.
 - f) The types of events are limited to the following:
 - a. Flower Shows including: Haworthias and Gasterias National Collection; Cacti Thames Valley Orchid Show; Ottershaw Cacti; Reading Fuchsia Society Show
 - b. Children's Activities including: Supervised planting and gardening activities for children as part of National Children's Gardening Week; Welly Planting; Children's Entertainments (story telling etc), Wild animal visits
 - c. Community Events including: RG10 Front Garden Competition event; Twyford in Bloom event; Twyford Treasure Trail; Twyford Fun Run event; Henley Arts Trail event and art installation; Pumpkin event
 - d. Community Tea Party; Food and Drink Fair/Tastings other seasonal events and charitable fundraisers.
 - g) No retail sales are permitted in the red hatched area outlined in the approved site plan SK-005 Rev A unless they are ancillary or incidental to the specific event being held.
- 4) The part of the building hereby permitted shall be used only for community events specified in Condition 3 and for no other purpose, including any other purpose in Classes A1 or D1 of the Schedule to the Town and Country Planning [Use Classes] Order 1987 (as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order [with or without modification].

End of Schedule

Appeal B Schedule of Conditions

1. This permission is in respect of the plans numbered HH-GS-01 Rev A and HH-GS02 Rev A, both dated 15 March 2021 and received by the local planning authority on 26 March 2021. The development shall be carried out in accordance with the approved details unless other minor variations are agreed in writing after the date of this permission and before implementation with the Local Planning Authority.
2. The use hereby permitted shall be discontinued and all goods and paraphernalia associated with the retail use shall be removed from the site on or before two years from the date of this Decision.
3. Deleted
4. No goods shall be displayed or sold within the indoor floorspace other than the following:
 - a) Bought in plants for immediate sale – including bedding plants, shrubs, trees, house plants etc
 - b) Tools and equipment - including forks and spades, hedge shears, loppers, secateurs, gloves, boots etc
 - c) Growing media - including composts, grits, sands, bark etc
 - d) Fertilisers and chemicals – including fertilisers, pesticides, herbicides, lawn treatments, woodcare, salt etc
 - e) Irrigation - including micro watering systems, hose pipes, watering cans, accessories etc
 - f) Landscaping and design - including plant supports, fencing, garden arts and ornaments, stones, aggregates, solar lights, etc
 - g) Containers including - pots - indoor and outdoor (plastic and terracotta), seed trays, hanging baskets, patio tubs, accessories (pot feet, plant caddy's) etc
 - h) Seeds and bulbs - including seeds, bulbs, seed potatoes, vegetable sets etc
 - i) Bird/bee/wildlife care - including insect habitats, bird food, hedgehog houses etc
 - j) Grow your own – including netting, vegetable troughs, vegetable beds, plastic growing units (mini greenhouses), greenhouse accessories, allotment accessories etc
 - k) Christmas trees, decorations, and Santa's grotto (seasonal)
No goods shall be displayed or sold within the (182m²) outdoor space other than the following:
 - l) Plants for immediate sale – including shrubs, trees, and house plants.

End of Schedule