
Appeal Decision

Hearing held on 27 April 2022

Site visit made on 27 April 2022

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2022

Appeal Ref: APP/R3650/W/21/3271908

Red House Farm, Red House Lane, Elstead GU8 6DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Peter McGleughlin against the decision of Waverley Borough Council.
 - The application Ref WA/2020/0455, dated 10 February 2020, was refused by notice dated 22 January 2021.
 - The development proposed is the erection of extensions and alterations to 2 existing barns to form 1 dwelling following demolition of existing American barn; erection of extension to nissen building to provide ancillary accommodation; demolition of existing outbuildings and landscaping.
-

DECISION

1. The appeal is dismissed.

PRELIMINARY MATTERS

2. In the lead-up to the hearing, additional information and documents were submitted. This included a final Statement of Common Ground, a statement from the appellant regarding a fallback position, an Updated Preliminary Ecological Appraisal, emails regarding housing land supply and the neighbourhood plan, two appeal decisions, and further information on the previous planning permission Ref WA/2012/0427 for extensions and conversion to Red House Farm. I am satisfied that in all cases the material was relevant to, and necessary for, my Decision. All parties were given opportunities to comment as required, including at the hearing. I am satisfied that there would be no prejudice to any party from my consideration of these documents and information. The appeal is therefore determined on the basis of the additional information.
3. The Elstead & Weyburn Neighbourhood Plan 2013-2032 (the NP) was submitted for examination in April 2022. It will be undergoing further consultation and is likely to change. It therefore has limited weight, as agreed between the main parties at the hearing.
4. Elstead Parish Council appeared at the hearing and I have reflected their position as appropriate throughout my Decision.

MAIN ISSUES

5. All of the site lies in the Green Belt. In light of this, the reasons for refusal of the planning application and the additional information submitted in the lead-up to the hearing, as discussed above, the main issues are:
 - the effect of the proposal on the character and appearance of the area, including on the landscape and scenic beauty of the Surrey Hills Area of Outstanding Natural Beauty (the AONB);
 - whether or not the proposal would be inappropriate development in the Green Belt, with particular regard to the exception criteria set out at paragraphs 149(c) and (g) of the National Planning Policy Framework (the Framework); and,
 - the effect of the proposal on biodiversity, with particular regard to protected species and the Thursley, Hankley & Frensham Commons Site of Special Scientific Interest (the SSSI).
6. The overall planning balance is also a key consideration.

REASONS

7. The Development Plan for the area includes the Waverley Local Plan Part 1: Strategic Policies and Sites, 2018 (the LP Part 1) and the Local Plan, 2002 (the LP). The Surrey Hills Management Plan, 2020-2025 (the MP) is also an important material consideration.

Character and appearance

8. The appeal site comprises the agricultural and equestrian buildings and land situated to the south of Red House Farm, a grade II listed farmhouse. There are a number of buildings of varying sizes, styles, and states of repair. The site has previously been used for pig farming and equestrian use, and is still used, in part, for general agricultural use. The site also includes an access drive, which turns off from the main access drive to the farm house, and a small area of open land including two mobile homes, one which is in residential use and one which is used as ancillary storage. The appeal site lies within a rural landscape, relatively close to Elstead village, but clearly separated from the village by fields. This farmland forms the character of the landscape to the north and east, and a wooded area borders the site to the south and west. All of the appeal site lies within the Surrey Hills AONB and also an Area of Great Landscape Value.
9. Many of the buildings are dilapidated. The landscaping is also largely overgrown and poorly kept. However, the existing collection of buildings are appropriate in appearance and character to their agricultural and equestrian setting. The American Barn is of a different style to the Sow Houses but it is still an agricultural style, with a low profile, and it is broadly in-keeping with the other existing buildings. Both the American Barn and the Sow Houses are fairly large structures. However, they have no fenestration and the Sow Houses have partially open elevations. This diminishes their visual prominence. All of the buildings, with the exception of the mobile homes, have a suitable character and appearance for a farm and rural setting. The dilapidated nature of many of the buildings and structures does not materially detract from this because this is a relatively common feature of ancillary and secondary farm

- structures. The equestrian areas and buildings and the area set aside for equestrian activity and stabling are also common in a farm setting.
10. It is proposed to demolish the storage, ancillary buildings and the stable, and convert and extend the two Sow Houses, albeit including demolition of the existing 'wings', and to demolish and replace the American Barn building, to create one large house. The three main structures would be joined by two new wings. It is also proposed to extend the Nissen Building for ancillary residential accommodation. All other buildings and the equestrian centre would be demolished and the land turned to a mixture of private garden, access drive, and open meadow. The two existing mobile homes would both be demolished. It is also proposed to retain and re-surface the existing access track.
 11. The area of the site where the proposed house would be constructed, ie the two Sow Houses and the American Barn, would retain essentially the same volume, with a net reduction of 9 m³, and a similar overall footprint. However, the resultant house would be a very large residential property. It would have a significantly different character and appearance to the existing buildings, primarily through the introduction of extensive fenestration and a greater permanence and character afforded by the proposed timber cladding. This would fundamentally alter the character and appearance of the appeal site, in particular when lit at night. It would change the area from being perceived as being ancillary farm or equestrian use, subservient to the farm house, to independent residential use.
 12. The driveway would be re-surfaced but it is already gravel covered and this would not make a material difference to the character and appearance of the area. I also acknowledge that the proposed demolition of many of the more dilapidated buildings and the creation of a wildflower meadow would be beneficial aspects of the proposal. However, the garden and forecourt areas proposed around the new house would also reinforce the proposed change in character away from ancillary farm or equestrian use to independent residential use.
 13. Although relatively isolated and screened almost completely to the south and east by woodland, there are public rights of way close to the appeal site, to the south-west and north-east, which afford public views of the appeal site and the proposal. The harmful effects of the proposal would therefore be felt by the public as well as the occupants, or future occupants, of the farm house.
 14. The MP, in relation to the AONB, gives particular emphasis to public views and tranquillity, the need to avoid incongruous buildings and ensure that light pollution is resisted. The proposal would harm all these aspects, through the introduction of a large, incongruous, residential property, with substantial glazed areas, that would be visible from public rights of way. Despite the retention of the Nissen Building, the proposal would also result in the removal of all the equestrian and agricultural buildings on the appeal site, thereby potentially harming the viability of the wider agricultural use, or at least placing pressure on the need to provide replacement or alternative structures elsewhere. This is also in conflict with the MP, although I place limited weight on this factor because no substantive evidence has been provided that any replacement structures would definitely be required.
 15. The appellant has stated that, if the appeal is unsuccessful, he is likely to bring the site back into equestrian use. He also highlights that the existing equine

area, if bought back into use, includes floodlighting. There is no guarantee that either scenario would occur and such a proposal is not before me. However, on the basis of the business case evidence provided by the appellant and that the appeal site is already partially set-up for equine use and could relatively easily be converted for this to be resumed and/or expanded, I believe there to be a real prospect that this could occur. Such a use is likely, however, to cause lesser, if any, harm to the character and appearance of the appeal site, because it would be reverting to a previous use that is also appropriate in a farm and agricultural setting. There would be the potential for the use of floodlighting for the equine area but it is not clear to what extent. In addition, floodlighting of an equine area is more in-keeping with the character and appearance of the area than the proposed, more permanent, and different character of lighting from large areas of exposed glazing to a dwelling.

16. Consequently, the proposal would harm the character and appearance of the area. It would also fail to conserve or enhance the landscape and scenic beauty of the AONB. It therefore fails to comply with Policy TD1 of the LP Part 1, which requires high quality design, and Policies D1 and D4 of the LP, which resist development that would cause harm to the visual character and distinctiveness of a locality, including to landscape. It also fails to comply with chapter 12 of the Framework, which requires high quality design, and with paragraph 176, which seeks to conserve and enhance the landscape and scenic beauty of Areas of Outstanding Natural Beauty.

Inappropriate development in the Green Belt

Conversion and extension

17. The conversion and extension of the Sow Houses would involve extensive structural works. However, the basic silhouette of the buildings would be retained. Two new wings would be introduced, but these would replace existing wings to be demolished. The shape and footprint of the new wings would be different, connecting the two buildings and to the replacement American Barn building, and they would be taller. However, they would also be narrower and would only run across the central sections of the buildings rather than along the entire side elevations, and would remain subservient structures. Overall, this element of the works would not therefore result in disproportionate additions over and above the size of the original buildings, and would be 'not inappropriate' development in relation to paragraph 149c) of the Framework.

Demolition and replacement

18. Previously developed land (PDL) is defined in the Framework and excludes land used for agricultural purposes. The appeal site includes a mixture of agricultural and equestrian use. The equestrian use is limited to the sand school and the American Barn stables, because the other buildings are clearly in, or where most recently in, use for agricultural purposes, including pig stys, storage facilities, and other ancillary agricultural uses. However, the proposed house is either sited on the Dry Houses land, which although in agricultural use I have covered above, or on the American Barn land, which is in equestrian use.
19. I therefore consider the element of the proposal that involves demolition and replacement of the American Barn in light of paragraph 149g) of the Framework regarding the redevelopment of PDL. To be considered as 'not

inappropriate' development, it must not have a greater impact on the openness of the Green Belt than the existing development. This element of the proposal would result in a replacement building of reduced footprint but greater height. The overall volume of the American Barn area of the site would reduce from 1,402 m³ to 1,320 m³. Spatial openness would therefore not be harmed. Visual openness would also not be harmed because although on one hand the replacement structure would be more visible because of its greater height, this would be offset against the reduced footprint and overall similar bulk.

Conclusion

20. The proposal is therefore 'not inappropriate' development in the Green Belt. It therefore follows that the proposal would not be harmful to the openness of the Green Belt or the purposes of including land in the Green Belt.¹ The proposal therefore complies with, or does not engage, paragraphs 147 and 149 of the Framework. It also complies with Policy RE2 of the LP Part 1, which reflects the Framework.

Biodiversity

Species

21. The appellant has submitted a Preliminary Ecological Assessment dated October 2019, as updated in February 2022 (the PEA 2022). The appeal site and its surroundings would likely be a suitable habitat for a number of protected species including bats, reptiles and badgers.
22. The PEA 2022 finds that there are potentially some reptiles on the site. A mitigation strategy including translocation of reptiles is set out. Three of the existing buildings have bat roost potential and bat sightings were made during the surveys for the PEA 2022. By mitigation, the appellant has stated they could apply for a license to ensure that no bats or their roosts would be unlawfully damaged. An active badger sett is within 40m of the appeal site. This is outside, but close to, the normal 30m zone for the implementation of mitigation such as precautionary working methods and license(s) for sett closures. A further survey closer to the construction of the proposal would likely be required to establish if the sett has moved to within the 30m zone. Nesting birds were found during surveys for the PEA 2022. Mitigation could be through timing of vegetation removal and demolition.
23. Overall, subject to the mitigation measures, all of which could be secured by condition(s) if the proposal were otherwise acceptable, the proposal would not materially harm the identified protected species or their habitats on the appeal site.

Thursley, Hankley & Frensham Commons Site of Special Scientific Interest

24. The appeal site lies outside of the SSSI, but very close to its boundary. The SSSI, as set out in the citation, provides a remarkable diversity of flora and fauna. Of particular importance are reptiles, breeding and wintering birds, and the peat and heathland habitats.
25. The proposed dwelling could give rise to dog walking in and around the area, as well as general recreation, and potential car predation. Due to the site's

¹ As set out at paragraph 17 of Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

proximity and ease of access into the SSSI on footpaths and bridleways, this would likely harm the key features, such as breeding birds, of the SSSI. No mitigation is proposed, and it is unclear whether any mitigation could realistically be provided, because it would be impossible to prevent future occupiers owning pets and the ease of access to the SSSI.

26. However, the PEA 2022 uses a 'baseline' of assuming that the equestrian centre was back in operation and, on the basis that equestrian use would have a greater effect on the SSSI than the proposal such as through higher dog usage, finds that the proposal would not cause an adverse effect on the SSSI. My attention was also brought to the Britannia Assets² case, which finds at paragraph 88 that it would be strange to refuse planning permission on the grounds of the effect on a protected site when an existing lawful use might have a greater effect.
27. I agree that the fallback equestrian use would likely have a greater effect on the SSSI. Equally, however, and as stated by Natural England, the site is not currently an equestrian centre. I am conscious that I have accepted the equestrian fallback position in relation to the assessment of character and appearance. However, this is an on balance consideration of probabilities. In the context of potential damage to an SSSI and important species and habitats, I place greater weight on the uncertainty and do not rely on this use as the baseline.
28. Consequently, it has not been demonstrated that the proposal would not have an adverse effect on the SSSI, specifically with regard to the potential effects on reptiles and birds. The proposal therefore fails to comply with Policy NE1 of the LP Part 1, which seeks to retain, protect and enhance biodiversity, and that appropriate mitigation be provided for any adverse impacts. The benefits of the proposal are relatively limited, as set out below, and it has not been demonstrated that they would clearly outweigh the potential harm to the SSSI. The proposal therefore also fails to comply with paragraph 180b of the Framework.

OTHER MATTERS

29. The Red House Farm farm house is a grade II Listed building. It is common ground, and I agree, that the proposal is sufficiently distant from the house so as to ensure that there would be no material harm to its setting.
30. A number of letters of objection have been submitted. I have addressed the material points raised in my Decision above.

PLANNING BALANCE AND CONCLUSION

The 'tilted balance'

31. It was agreed at the hearing that the Council can only demonstrate a 4.3 year supply of housing land. The proposal is for a house. Paragraph 11d of the Framework is therefore engaged, as set out at footnote 8. However, as set out above, I have found harm to the Surrey Hills AONB, which is an area of particular importance as set out at footnote 7, and this provides a clear reason for refusing the development proposed. Paragraph 11di of the Framework

² Britannia Assets (UK) Ltd v Secretary of State for Communities and Local Government [2011] EWHC 1908 (Admin)

states that, in such situations, paragraph 11d should be disengaged. The 'tilted balance' is not, therefore engaged.

The 'Green Belt balance'

32. As set out above, the proposal is 'not inappropriate' development and I have found no harm to the Green Belt. Paragraph 148 of the Framework and the consideration of 'very special circumstances' is not therefore relevant to this appeal.

Planning balance and conclusion

33. The proposal would result in the creation of a new housing unit, which would help the Council to meet its housing land supply. The provision of housing is one of, if not the, key aspirations of national planning policy, and I place significant weight on this factor, albeit the benefit is limited because there would only be one residential unit. It would bring temporary economic benefit from the construction process, and long-term economic benefit from the boost to local services from the greater occupancy on the site. As directed by paragraph 81 of the Framework, I place significant positive weight on the economic benefits, but they would be limited in scope because only one dwelling is proposed.
34. That the proposal would be 'not inappropriate' development in the Green Belt, and that the proposal would not materially harm the identified protected species or their habitats on the appeal site, weigh neutrally in the planning balance.
35. The proposal would harm the character and appearance of the area. I place moderate negative weight on this harm. It would also fail to conserve or enhance the landscape and scenic beauty of the AONB, and I place great weight on this harm, as directed by paragraph 176 of the Framework. It has not been demonstrated that the proposal would not have an adverse effect on the SSSI. Overall, I place only limited negative weight on this factor, because of the uncertainties of what the level of harm, if any, would be.
36. The harms that I have identified, in particular that to the AONB, outweigh the relatively limited benefits that the proposal would bring. For these reasons, the appeal is dismissed.

Habitats

37. The appeal site sits within 400m of the boundary of the Wealden Heaths I Special Protection Area (SPA), Thursley, Ash, Pirbright and Chobham Special Area of Conservation (SAC), and Thursley and Ockley Bogs Ramsar sites. Had the proposal been acceptable in planning terms, it would have been necessary for me to have undertaken an Appropriate Assessment (AA) as the competent authority. However, the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an AA is only necessary where the competent authority is minded to approve planning permission, so I have therefore not undertaken an AA.

O S Woodward
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alex Shattock
Peter Cleveland MRTPI
Peter McGleughlin

Counsel, Landmark Chambers
Partner, Henry Adams LLP
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Philippa Smyth

Principal Planning Officer, Waverley District
Council

Matt Kolaszewski

Development Lead, Waverley District Council

INTERESTED PERSONS:

Councillor Jane Jacobs
Stephen Barnett
Les Stevenson

Ward Councillor, Elstead Parish Council
Neighbour
Neighbour