



Appeal Decision

Site visit made on 6 September 2022

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 4th October 2022

Appeal Ref: APP/L3625/W/20/3257912

**Orchard Cottage Riding Stables, Babylon Lane, Lower Kingswood
KT20 6XA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Millwood Designer Homes against Reigate & Banstead Borough Council.
 - The application Ref 20/00356/F is dated 17 February 2020.
 - The development proposed is demolition of a redundant riding school and the erection of four new dwellings, access and associated landscaping.
 - This decision supersedes that issued on 18 February 2021. That decision on the appeal was quashed by order of the High Court.
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Preliminary matters

1. The decision issued on 18 February 2021 was challenged under S.288 of the Act on the following grounds:

Whether the Inspector-

1) failed to take account of material considerations and/or took into account irrelevant considerations in determining that the marketing exercise had failed to demonstrate that the site was surplus to requirements; and

2) misinterpreted the effect of local and national policy (paragraph 97 of the NPPF) leading to the conclusion that the marketing exercise had failed to demonstrate there was no continuing demand for the site as an equestrian/riding centre¹.

2. The first ground failed. The second ground was made out, the Judge finding that the issue of whether there was a prospect of the riding school resuming operation remained to be considered. The likelihood of resumption of the use was a material consideration to the balancing exercise to be undertaken².
3. Had the decision remained with the Council, the application would have been refused for the following reason: *'The proposed residential development would result in the loss of the recreational use of the site. The marketing exercise undertaken split the site originally operated and used for the purposes of a riding school and without all or any of the paddocks being included or made*

¹ Equivalent to paragraph 99 of the 2021 NPPF

² Summarised from Judgment ref CO/1187/2021 Millwood Designer Homes Ltd v (1) Secretary of State for Housing, Communities and Local Government (2) Reigate and Banstead Borough Council

available the process of marketing has demonstrated that there would be demand for the existing use if some or all of the associated paddocks were available as part of planning unit, therefore the proposal is contrary to policy CS12 of the Reigate and Banstead Core Strategy 2014, Policy INF2 of the Development Management Plan 2019 and the National Planning Policy Framework.

4. I have considered the appeal accordingly.

Decision

5. The appeal is allowed and planning permission is granted for demolition of a redundant riding school and the erection of four new dwellings, access and associated landscaping at Orchard Cottage Riding Stables, Babylon Lane, Lower Kingswood KT20 6XA in accordance with the terms of the application, Ref 20/00356/F dated 17 February 2020 and the plans submitted with it, subject to the conditions set out in the schedule at the end of this decision.

Main Issue

6. The main issue is whether the loss of the recreational use of the site would be justifiable having regard to national and local policy.

Reasons

The site and surroundings

7. The appeal site lies in an area of predominantly detached dwellings backing onto open countryside. It lies at the end of a short cul-de-sac off Babylon Lane just over 200 metres (m) from the A217 Brighton Road dual carriageway. It comprises the area occupied by buildings associated with an equestrian centre/riding school, permitted in 1980 but now unused, including an array of 21 loose boxes around a stable yard, a large indoor arena, tack rooms, hay stores and other buildings and associated areas of hardstanding.

Policy

8. The development plan for the area consists of the Reigate & Banstead Local Plan: Core Strategy (CS) adopted in July 2014 and reviewed in June 2019, and the Development Management Plan (DMP) adopted in September 2019. The CS was found to be sound judged against the National Planning Policy Framework (the Framework) of 2012 and was reviewed against the background of advice in the revised Framework issued in February 2019. Together these policies replace policy Re1 of the Reigate and Banstead Borough Local Plan of 2005 referred to in the refusal notice for the first application for redevelopment of this site which was subsequently dismissed at appeal in December 2018³.
9. CS Policy CS12 concerns infrastructure delivery. Paragraph 5 resists the loss of existing leisure and community facilities (including sport, recreation and cultural) and open spaces, unless it can be demonstrated that: a) the existing use is surplus to requirements, or b) equivalent or better provision in terms of quantity and quality, or some wider community benefits, will be made in a suitable location. These circumstances broadly reflect the advice in paragraph

³ APP/L3625/W/18/3200892

99 of the current 2021 Framework in relation to recreation/community facilities.

10. DMP policy INF2 advises that loss or change of use of existing community facilities will be resisted unless it can be demonstrated that the proposed use would not have an adverse impact on the vitality, viability, balance of services and/or evening economy of the surrounding community; and a) reasonable attempts have been made, without success, for at least six months to let or sell the premises for its existing community use or for another community facility that meets the needs of the community; or b) the loss of the community facility would not result in a shortfall of local provision of this type, or equivalent or improved provision in terms of quantity and quality, or some wider community benefits, will be made in a suitable location. Annex 3 to the DMP sets out the marketing standards that apply. The first appeal established that the riding school qualifies as a 'community facility' as referred to in policies INF2 and CS12.
11. Paragraph 99 of the Framework advises that existing open space, sports and recreational buildings and land... should not be built on unless: a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use. Policies INF2 and CS12 are broadly consistent with this advice in the Framework.

Background

12. The application subject to appeal is a revised proposal following the 2018 decision of an Inspector who considered that lack of an assessment showing that the 'open space, buildings or land are surplus to requirements', as required by paragraph 99 of the 2021 Framework (then paragraph 97), justified refusal. Moreover, the Inspector noted that there was no evidence of any attempt to dispose of the land and buildings for equine purposes or an alternative recreational or community use. This led to the conclusion that there could be no reasonable certainty that there was no demand for a facility of this nature.
13. The business had declined over several years, due to reducing numbers of hacks (riders per hack having being reduced from 6 to 3 plus an instructor due to safety concerns) and lessons (reducing from 293/week in 1990 to 189/week in 2015 and further decline subsequently). The viability of the business declined in part due to the need to navigate Babylon Lane and cross the A217 to reach Banstead Heath, Walton Heath, common land and associated bridleways. The business finally closed in December 2017.
14. A marketing exercise was carried out in February 2020. The premises marketed did not include the adjoining grazing land or dwelling as these were retained by the owner/operator for personal equine use and to keep control of the view from the retained dwelling, Orchard House.
15. Following marketing, the proposal subject of this appeal was also refused. The lack of nearby paddocks or grazing land attached to the premises being offered persuaded the Council to conclude that effective marketing had not been

shown to have taken place. The lack of land and/or a dwelling on site (considered necessary for an enterprise of this scale under the Animal and Welfare Act 2006) deterred buyers. The sand school area away from the house was not included and this put off a potential purchaser who expressed a desire to run a racehorse style livery for dressage horses. At the current time, the applicant has an agreement with the owner for acquisition of the redundant equestrian buildings for the appeal proposal.

Reasoning

16. Annex 3 to the DMP says that it must be shown to the council's satisfaction that marketing has been unsuccessful 'for all relevant floorspace proposed to be lost through redevelopment or Change of Use'. The term 'relevant floorspace', can be interpreted to include an area of open space or land, and is intended to prevent the fragmentation of sites. In this case that would include the area of grazing and/or a manège/sand school to the east of the main buildings to enable an equestrian centre/riding school to operate successfully. That need is adequately demonstrated by the marketing exercise which excluded such areas and hence deterred the majority of interested purchasers. That is the nub of the Council's case. The open spaces and recreational buildings together comprised the riding school that existed at the time of the application and the subsequent appeal. If the riding school was to remain functional as a community facility as defined by paragraph 99 of the Framework, it needed grazing land outside the red line of the appeal site. On that basis, there were several interested purchasers.
17. Having said that, there is no prospect of any grazing land or the sand school being included in the land for sale. Control over use of the paddock and personal use for grazing and riding remain with the owner and I note that the eastern paddock is an important part of the aspect seen from Orchard House. The manège/sand school is more remote and it is harder to see how equine use of this facility would detract from views from the house. The marketing agents White and Sons point out that, acknowledging that the lack of grazing land would put off some potential buyers, nonetheless it is not unheard of for large equestrian sites to operate successfully without adjacent grazing land. This would apply to thoroughbred horses for instance, where specialist diets are needed. The heaths would still be available for riding, if not ideally placed.
18. In these circumstances, it is necessary to consider whether the riding school would be surplus to requirements with all or part of the additional land. The Council provides no evidence of any local shortfall in equine facilities. An Open Space, Sport and Recreation Assessment completed under (then revoked) national guidance in Planning Policy Guidance note PPG17, prior to 2012, forms part of the evidence base for CS12 but has not been updated and must carry little weight now. Paragraph 98 of the Framework says that planning policies should be based on robust and up-to-date assessments of need. In this case, the evidence of 'need' arises solely from the expressions of interest in the marketing process.
19. There are no representations from any interested parties supporting retention of the facility on the basis of undersupply in the current appeal- indeed, there is reference to another successful equine enterprise elsewhere and there is evidence of a relatively high number of equestrian businesses within a 25 mile radius. The marketing exercise demonstrated a level of interest that cannot be

discounted. It has not been adequately shown that another operator could not run an equine business profitably, particularly if additional grazing land is part of the unit. The appellant has failed to demonstrate that the facility is surplus to requirements with some or all of the land associated with it. This conflicts with the relevant parts of policies CS12 and INF2.

20. The first Inspector noted that rider-controlled crossing points were available on the A217 and I have no evidence that these are not adequate. Some weight must attach to the difficulties for horse riders using Babylon Lane. One objector points out that Babylon Lane has become a 'rat-run' and I noted that it is relatively narrow and lined with high hedges. I do not doubt that traffic levels have increased. However it is unclear that these difficulties prevent all equine operations, if additional land was available. The site's location would have been evident to potential purchasers.
21. With reference to DMP policy INF2, there is nothing to suggest that loss of the riding school would have an adverse impact on the vitality, viability, balance of services and/or evening economy of the surrounding community; or that there would be a shortfall of local provision of this type.
22. I now turn to the prospects of the resumption of the riding school use in the event of planning permission being refused, as it was. On the evidence before me, as set out in the report from the Equine Consultancy Group and with reference to the planning history of the site, the owners were enthusiastic and assiduous in supporting the riding school long before, and during the period when the business began to fail. I consider that, on balance, without additional land, the prospects of a successful equine operation are remote. No part of the additional grazing land around the buildings will become available. It is likely that the buildings would remain unused for equine purposes. Even with additional land, the prospects for hacking and riding locally are diminished and disadvantageous compared with similar operations on the other side of the A217. The explanatory text to INF2 recognises the need to protect existing provision of community facilities, while also accepting that in some cases a lack of demand may make it unviable to retain them. The aim of marketing guidance is to avoid fragmentation of sites, but the particular circumstances of this site indicate that it may be justified if the benefits overall clearly outweigh the disadvantages.
23. It remains to consider the planning balance between loss of the recreational use and the benefits of the development proposal. The proposed dwellings on 'brownfield' land would not be inappropriate development in the Green Belt as defined in paragraph 149 of the Framework. Removal of the existing buildings and replacement with the proposed 4 dwellings would represent a significant reduction in built form and an improvement in the openness of the Green Belt. The provision of new housing would make a contribution to supply in Reigate and Banstead and this attracts very significant weight. The design and finishes of the houses would be rather more domestic than farmstead-derived but would be of high quality and sympathetic to the surroundings where there is already a prevailing mixed residential character. The site lies in a reasonably sustainable location within walking distance of public transport and local shops lie within 1 kilometre on Brighton Road. There would be no harm to landscape character in general or to the Surrey Hills Area of Outstanding Natural Beauty.

24. There are no other significant policy objections. In the overall balance, having regard to the presumption in favour of sustainable development in the Framework, the proposed development would not conflict with the development plan read as a whole.

Other matters

25. I have taken into account other matters raised by objectors including that this scheme would represent overdevelopment, the effect on highway safety and light and noise pollution. The site is 'previously developed land' having regard to the guidance in the Framework. The removal of the need for horses to pass along Babylon Lane and cross the A217 would reduce highway safety risks and there are no objections from the Highway Authority. I consider that traffic resulting from the scheme would be very unlikely to lead to an unacceptable impact on highway safety, given the existing use. Similar considerations apply in respect of light and noise pollution.

Conditions

26. The usual condition limits the time within which development may start. The development should be constructed in accordance with the approved drawings, for the avoidance of doubt. Samples of external finishes and ground floor slab levels need to be approved given the sloping hillside character of this Green Belt location. Conditions controlling tree protection and implementation of measures in the Arboricultural Method Statement as well as landscaping details need to be imposed given the landscape character. A Construction Transport Management Plan is required to ensure that the restricted access is not obstructed and that the times of deliveries and parking are controlled. Parking and turning of vehicles in the finished development need to be subject of another condition for character and appearance reasons as well as safety considerations. A contamination condition is necessary given the previous use of the site, but the shorter model condition is more appropriate here than those suggested by the Council's Environment Team. Ecological and biodiversity concerns are addressed by conditions relating to external lighting and measures set out in the Ecological Appraisal, as suggested by Surrey Wildlife Trust.
27. Other necessary conditions justified by development plan policies relate to car charging points, obscured glass at first floor, boundary treatment and water consumption. The suggested broadband connection condition is vague as to connection speed and unnecessary for a development of this type in 2022. A restriction on permitted development is necessary given the semi-rural location of the site on rising ground, in the interests of the character and appearance of the area.

Conclusion

28. For the above reasons, the appeal should be allowed.

Paul Jackson

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans

Plan Type	Reference Version
Location Plan	P301 / PL / 1000
Elevation Plan	P301 / PL / 1052 B
Floor Plan	P301 / PL / 1051 C
Elevation Plan	P301 / PL / 1042 B
Elevation Plan	P301 / PL / 1022 B
Floor Plan	P301 / PL / 1041 E
Floor Plan	P301 / PL / 1021 C
Proposed Plans	P301 / PL / 1005 A
Site Layout	P301 / PL / 1001 B
Roof Plan	P301 / PL / 1023 A
Roof Plan	P301 / PL / 1033 A
Roof Plan	P301 / PL / 1043

No development shall be undertaken until the details of both existing and proposed ground levels and the proposed finished ground floor levels of the buildings have been submitted and approved in writing by the Local Planning Authority (LPA). The development shall be carried out in accordance with the approved details.

No development shall take place until samples of the materials to be used in the construction of the external surfaces, including fenestration and roof, have been submitted to and approved in writing by the LPA, and the development shall be carried out in accordance with the approved details.

- 3) No development shall commence including demolition and or groundworks preparation until a detailed, scaled Tree Protection Plan (TPP) and the related Arboricultural Method Statement (AMS) is submitted to and approved in writing by the LPA. These shall include details of the specification and location of exclusion fencing, ground protection and any construction activity that may take place within the Root Protection Areas of trees shown to scale on the TPP, including the installation of service routings. The AMS shall also include a pre commencement meeting, supervisory regime for their implementation & monitoring with an agreed reporting process to the LPA. The works shall be carried out in accordance with the approved details.
- 4) No development shall commence on site until a scheme for the landscaping of the site including the retention of existing landscape features has been submitted to and approved in writing by the LPA. The

landscape scheme must follow the principles set out in Fabrik Landscape Report: Baseline, Design Strategy and Policy Compliance July 2017. The landscaping scheme shall include details of hard and soft landscaping, including any tree removal/retention, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, and hedge or grass establishment), schedules of plants, noting species, plant sizes and proposed numbers/densities and an implementation and management programme.

Any trees shrubs or plants planted in accordance with this condition which are removed, die or become damaged or become diseased within five years of planting shall be replaced within the next planting season by trees, shrubs of the same size and species.

- 5) The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for 16 vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
- 6) No development shall commence until a Construction Transport Management Plan has been submitted to and approved in writing by the LPA, to include details of:
 - (a) parking for vehicles of site personnel, operatives and visitors
 - (b) loading and unloading of plant and materials
 - (c) storage of plant and materials
 - (d) measures to prevent the deposit of materials on the highway
 - (e) on-site turning for construction vehicles
 - (f) dust mitigation
 - (g) hours of work

The Construction Transport Management Plan shall be implemented during the construction of the development in accordance with the approved details.

No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the LPA. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the LPA. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the LPA. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in

writing by the LPA. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the LPA within 14 days of the report being completed and approved in writing by the local planning authority.

- 7) The development hereby approved shall be undertaken in accordance with paragraph 4.2 of the Updated Ecological Appraisal dated October 2019 ref: E1869r3.

No development above ground level shall commence until a scheme to provide positive biodiversity benefits has been submitted to and approved in writing by the LPA. This should be designed alongside the soft landscaping proposals for the site. The biodiversity enhancement measures approved shall be carried out and maintained in strict accordance with these details or as otherwise agreed in writing by the LPA, and before occupation of this development.

Prior to commencement of development, details of external lighting, including proposed operating times and details of shielding to control light spill, shall be submitted to and approved, in writing, by the LPA, and there shall be no variance in external lighting other than as approved.

The first floor windows in the side elevations of the development hereby permitted shall be glazed with obscured glass which shall be fixed shut, apart from a top hung opening fanlight whose cill height shall not be less than 1.7 metres above internal floor level, and shall be maintained as such at all times.

No development shall take place until a plan indicating the residential curtilages of the dwelling houses and a plan indicating the positions, design, materials and type of boundary treatment to be erected, including provisions for wildlife access, has been submitted to and approved in writing by the LPA. The boundary treatment shall be completed before the occupation of the development hereby permitted and no residential or associated domestic uses shall take place outside the residential curtilages agreed.

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions permitted by Classes A, B, C, D or E of Part 1 of the Second Schedule of the 2015 Order shall be constructed.

- 8) The development hereby approved shall not be occupied unless and until each of the proposed dwellings are provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted and approved in writing by the LPA and thereafter retained and maintained.
- 9) The development hereby approved shall not be first occupied unless and until an Energy and Water Efficiency Statement has been submitted to and approved in writing by the LPA. The Statement shall detail how the development will:

a) Ensure that the potential water consumption by occupants of each new dwelling does not exceed 110 litres per person per day (contd.)

b) Achieve not less than a 19% improvement in the Dwelling Emission Rate (DER) over the Target Emission Rate (TER) as defined in Part L1A of the 2013 Building Regulations

The development shall be carried out in accordance with the approved details and any measures specific to an individual dwelling(s) shall be implemented, installed and operational prior to its occupation.