



Appeal Decision

Site visit made on 10 January 2023

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th February 2023

Appeal Ref: APP/Y3615/W/22/3305290

Greengage Farm, West Flexford Lane, Wanborough, Surrey GU3 2JW

- 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 Randolph Gardiner against the decision of Guildford Borough Council.
 - The application Ref 21/P/00914, dated 23 April 2021, was refused by notice dated 24 February 2022.
 - The development proposed is the erection of two detached single storey dwellings following the demolition of existing buildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's second reason for refusal refers to a lack of sustainability information being included with the scheme. The appellant has highlighted in the Statement of Case that the proposal would include sustainability measures within the scheme. The Council has also set out that the amended Building Regulations, which came into force on 15 June 2022, requires a greater reduction in carbon emissions than set out in the adopted development plan, and there is no need to duplicate the function of other regulatory bodies or controls. The Council confirm they no longer object to the proposal for these reasons, subject to a condition to ensure the measures set out by the appellant were secured. Based on the evidence before me, I find no reason to disagree with these conclusions.
3. The Council's third reason for refusal referred to a failure to provide mitigation for recreational impacts associated with the development on the Thames Basin Heaths Special Protection Area. However, the Council confirms that this would be overcome by the Unilateral Undertaking (UU) submitted by the appellant containing planning obligations made pursuant to Section 106 of the Town and Country Planning Act 1990. I return to this matter later in my decision.

Main Issues

4. The main issue is the effect of the proposed development on the provision of employment land, with regard to viability

Reasons

Loss of employment land

5. The site relates to a linear shaped plot adjoining West Flexford Lane. The land includes a long single storey building to the east of the land, with vehicle access

to the south and west. The land includes a vehicle track across the site as well as a portacabin and shed type structures and some openly stored cars. The land was granted a Certificate of Lawfulness in 2014¹, and then 2016², for different B2 and B8 employment uses. It has been used most recently (2021) by a tenant for the repairing of classic cars.

6. Policy E3 (12) of the Guildford Borough Local Plan: Strategy and Sites 2019 (Strategy and Sites) sets out that employment floorspace will be protected in line with the latest needs assessment and the loss will be resisted unless the site is allocated for an alternative use within the Local Plan. Redevelopment or change of use to housing use will be acceptable if evidence is provided showing active and comprehensive marketing of the site for its current use for a continuous period of at least 12 months prior to submission of a planning application. An active and comprehensive marketing of the site is defined by the guidance set out in Appendix 4 of the Strategy and Sites Plan. I have had regard to this when considering the marketing information.
7. The Council confirms in the Officer report that the site has been advertised with a reasonable amount of commercial property listing websites and a marketing board. This addresses the requirements of a) to d) of the evidence needed and set out in Appendix 4 of the Strategy and Sites Plan. The Council's concerns regarding the marketing information are with respect to a lack of detail and dates on the marketing strategy, whether the property was marketed at a reasonable price and terms, including its use, condition quality and location of floorspace. Also, there was no detail of any covenants or any other form of tie that restrict the future use or operation of the property or land.
8. I have had regard to the appellant's position, including the length of time the site has been marketed and the marketing strategy set out by a commercial agent. However, the supporting evidence setting out the marketing strategy does not indicate dates of when the 'mailouts' were carried out, and how often over the marketing period. From the evidence before me, I am uncertain whether the mailouts were carried out prior to, and following, the reduced rental price or changes to repair obligations. Furthermore, the site has not been marketed as a freehold, or valued by at least three independent agents. Lastly, there are no details regarding covenants or ties on the property.
9. I note that the building is in a poor condition and the private lane access could be improved. Although changes to the repair obligations were introduced as part of the marketing strategy, the primary reason for prospective tenants not taking up the space was that the 'access is not sufficient'. However, the reasons given by prospective tenants lacks detail, and the Wanborough Business Centre lies to the north of the site, which includes active commercial uses that would be accessed via the same private lane. As such, I am uncertain whether the reason given by prospective tenants is referring to the condition of the private lane or access into the site. In any event, there is no substantive evidence to show how problems associated with the access have been addressed through the marketing strategy.
10. The guidance set out in Appendix 4 is clear and straightforward, placing the onus on the appellant to demonstrate that the future employment use is unlikely. As the proposal is to replace the building and change the use of the land to

¹ Council reference 14/P/01500 - Car repair/maintenance/servicing and storage of cars

² Council reference 16/P/02259- Storage of plan machinery and materials for civil and materials for cii and landscape business

residential, I would expect the site to have been marketed for sale. Furthermore, it is reasonable to expect the value of the site to be corroborated by least three independent agents, and for the necessary dates and evidence to be provided to clearly show the marketing was ongoing, continuous and addresses the main problems with the site. I accept that the marketing has been carried out for the requisite period, but the lack of detail and missing information leads me to conclude that the marketing falls below the reasonable requirements and fails to demonstrate that extensive efforts have been made to market the site actively and comprehensively for an employment use.

11. I have had regard to appellant not wanting to sell or dispose of the land due to concerns over the land being developed for residential purposes by future owners. Although I appreciate the concerns, this is not a sufficient reason to only market the leasehold for the site. If offers are made during the marketing exercise for the freehold, there is no obligation for the appellant to sell the land. Also, any future owner would also be required to follow the same approach to developing the land for residential purposes.
12. Accordingly, based on the evidence before me, the proposed development would have a harmful effect on employment provision in the area. The proposal would be contrary to Policy E3 (12) of the Strategy and Sites Plan, which protects against the loss of employment land unless it is allocated as an alternative use in the Local Plan or an active and comprehensive marketing of the site as its current use demonstrates that it is no longer viable as employment land.

Other Matters

13. The Thames Basin Heaths Special Protection Area (SPA) is a network of heathland habitats for three internationally important bird species, woodlark, nightjar and Dartford warbler. The SPA is also identified at a national level as the Ash to Brookwood Heaths Site of Special Scientific Interest (SSSI). The SPA is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations).
14. Had I found the proposal to be otherwise acceptable, the Regulations impose a duty to consider within the framework of an Appropriate Assessment whether it would have a significant effect on the conservation objectives of the SPA either alone, or in combination with other plans and projects. As part of this, I would need to consider the likely effectiveness of mitigation proposed by the UU. However, given the harm that I have identified above and that I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further as it could not alter my decision.
15. I note that the appellant has put forward a fall-back position. It is indicated that he may need to rely on permitted development rights to convert the existing buildings into possible residential accommodation for the future. However, I do not have sufficient detail of this alternative to determine whether there is a real prospect of such a scheme being implemented were I to dismiss the appeal. Accordingly, I attribute this matter limited weight in my decision.
16. I acknowledge the representations from neighbours supporting the proposal. However, the level of support shown does not outweigh the harm identified to the provision of employment land in the area.

Conclusion

17. The proposed development would conflict with the development plan and there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. The appeal should, therefore, be dismissed.

M. P. Howell

INSPECTOR