



Appeal Decision

Site visit made on 18 January 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th April 2023

Appeal Ref: APP/B1740/W/22/3296381

Land rear of 9-23 Sky End Lane, Hordle SO41 0HJ

- 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 outline planning permission.
 - The appeal is made by Merryfield Homes against New Forest District Council.
 - The application Ref 21/11637, is dated 3 December 2021.
 - The development proposed is described on the application form as, "Demolition of existing buildings and construction of up to 6 dwellings utilising existing access from Sky End Lane (matters of layout, appearance and landscape reserved)".
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Decision

1. The appeal is dismissed and outline planning permission for the demolition of existing buildings and construction of up to 6 dwellings utilising existing access from Sky End Lane (matters of layout, appearance and landscape reserved) is refused.

Preliminary Matters

2. This appeal follows an outline application, where the only matters to be considered are access and scale. Matters of appearance, landscaping, and layout are reserved for later consideration.
3. Since the appeal responds to the Council not having determined the application, there is no decision notice. Nonetheless, they have stated it would have been refused. The reasons for which have informed the main issues of the appeal.

Main Issues

4. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt;
 - whether the appeal site would be a suitable location for new housing, with particular regard to the settlement strategy for the area;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on highway safety, including the safety of vulnerable road users;

- the effect of the proposal on ecology, including protected species; and
- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development

5. The appeal site is situated in the Green Belt (not including the access to the site from Sky End Lane). Policy ENV2 of the New Forest District Local Plan 2016-2036 Part 1: Planning Strategy (adopted 2020) (Local Plan (Part 1)) provides that, amongst other things, development proposals in the Green Belt will be determined in accordance with national planning policy.
6. The Framework establishes that the construction of new buildings within the Green Belt is inappropriate development. There are however a limited number of exceptions to this, as set out in paragraph 149 of the Framework. The main parties have focussed on paragraph 149 g) of the Framework, which relates to limited infilling or the partial or complete redevelopment of previously developed land.
7. Previously developed land, as defined in the Framework, includes land which is or was occupied by a permanent structure, including the curtilage of the developed land. This definition excludes land that is or was last occupied by agricultural or forestry buildings. The appellant has confirmed that the site was formerly used for agricultural purposes and that the 2 sheds on site were previously used to house poultry.
8. On this basis, I consider that the site does not constitute previously developed land. The proposal does not therefore fall within the ambit of paragraph 149 g), which provides an exception to the construction of new buildings as being inappropriate development in the Green Belt.
9. Few specific details have been provided to demonstrate that a local community need for affordable housing under policies set out in the development plan exists. Hence, based on the evidence before me, I find that the proposal would not benefit from the exception to inappropriate development found at paragraph 149 f) of the Framework.
10. As such, I find that the proposal would represent inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt.

Openness

11. The Framework denotes openness as an essential characteristic of the Green Belt. The openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
12. The proposed dwellings would provide the same amount of floor space as the existing buildings on site. Whilst appearance is a reserved matter, the submitted illustrative drawings demonstrate that the dwellings could be designed to have a similar effect on openness as the existing structures on site,

including with respect to their roof forms. Similarly, whilst layout is a reserved matter, a layout could be achieved which would position the new dwellings closer to the existing settlement boundary of Hordle, when compared to the existing structures.

13. Nevertheless, although the appellant has calculated that the proposal would result in a net reduction in the amount of built form on the site, the future occupiers of the proposed dwellings would in all likelihood erect enclosing structures around the gardens and the boundaries of their properties. Additionally, the sheds on site are derelict and it appears from the information before me that the site has not been used on an intensive basis for some time, whereas the proposal would create 6 new dwellings on site, which would likely introduce items such as household bin storage, children's play equipment, and parked cars, amongst other items, together with a noticeable uplift in the comings and goings to and from the site.
14. The fact that the permitted development rights found under Classes A, B and E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) are not restricted in the Green Belt, and cannot be excluded via planning conditions for this reason alone, does not alter the actual effect on openness that would be caused by the likely presence of domestic paraphernalia and activity that would accrue over parts of the site.
15. Even though the impact to openness would be confined to the local area, the proposal's reducing effect on the openness of the Green Belt in spatial and visual terms would cause harm to the Green Belt. The evidence before me, including recent residential developments nearby, does not clearly indicate that the ratings given in the Green Belt Study¹ would result in the lowest possible rating on all criteria and therefore this consideration does not change my findings on this main issue.
16. It follows that although the site is situated between 27A Sky End Lane, Sylvan Close (where approval for a 2-storey dwelling between 9-11 Sylvan Close was previously given²) and the remainder of the wider former poultry farm site, the proposal would conflict with the purpose of including land in the Green Belt in terms of its assistance in safeguarding the countryside from encroachment (paragraph 138 c) of the Framework), which the Green Belt Study assessed as having a 'moderate' rating.

Location

17. The appeal site is a former poultry farm which contains 2 single-storey sheds. The site is situated to the rear of residential properties on both Sky End Lane and Sylvan Close.
18. Hordle is defined as a Main village in Policy STR4 of the Local Plan (Part 1), which sets out the settlement hierarchy in the Plan Area. However, the site is located outside of the built-up area of Hordle. In such locations, Policy STR3 of the Local Plan (Part 1) provides that, amongst other things, the primary objectives are to conserve and enhance the countryside and natural environment.

¹ New Forest District Green Belt Study: Final Report (LUC) (2016)

² Ref 06/87845

19. Rural housing exception sites come within the remit of Policy HOU5 of the Local Plan (Part 1), which provides that, amongst other things, new residential development will only be permitted on suitable sites outside the defined settlement boundaries where it is to meet an identified need of local people for affordable housing to meet local needs which cannot be provided in any other way. Similarly, part c) of Policy DM20 of the New Forest District Local Plan Part 2: Sites and Development Management (adopted 2014) (Local Plan (Part 2)) provides that, amongst other things, residential development in the countryside will only be permitted where it is affordable housing to meet a local need.
20. In this regard, the proposal relates to 6 self-build residential units. The Framework states that self-build housing can be either market or affordable housing and in relation to this the appellant has mentioned that the proposed units would be starter homes. Starter homes are defined as a type of affordable housing in the Framework. As such, the proposal would represent a 100% provision towards affordable housing in the area.
21. Nevertheless, although I note that the Council's pre-application advice mentioned that there is basis for supporting the principle of the development, for this appeal proposal few details have been provided to demonstrate that there is an identified need of local people for affordable housing, as required by Policy HOU5. Conversely, whilst matters of detailed design are reserved at this stage, the proposal has been put forward as comprising self-build starter homes and in this regard the Council has confirmed that the examination process of the Local Plan confirmed that allocated sites could provide for the mix of housing types required across the plan area (including self-build plots).
22. It is clear, then, that the proposal for 6 residential units to be situated within what is the open countryside for planning policy purposes conflicts with the aims of Policies STR3 and STR4 which together form part of the strategy for locating new development in the area. Considering that the Framework provides at paragraph 15 that, amongst other things, the planning system should be genuinely plan-led, this is a matter which undoubtedly weighs against the proposal.
23. Additionally, it follows from the above that the proposal would conflict with GBE01-Location of the Hordle Village Design Statement (adopted 2014) (VDS) which provides that new development should be within the existing settlement boundaries and not in the countryside subject to agreed exceptions set out in the Local Plans for the area and the Framework.
24. Due to the number of units and the amount of residential floorspace proposed, affordable housing is not required as per Policy HOU2 of the Local Plan (Part 1). Even so, the lack of conflict with Policy HOU2 does not alter the conflicts identified above. Accordingly, my findings on this main issue remain unchanged.
25. I therefore find that the appeal site would not be a suitable location for new housing, with particular regard to the settlement strategy for the area. The proposal would conflict Policies STR3 and STR4 of the Local Plan (Part 1), the aims of which I have set out above, and with Policy HOU5 of the Local Plan (Part 1) which provides that, amongst other things, new residential development will only be permitted on suitable sites outside the defined settlement boundaries where it is to meet an identified need of local people for affordable housing to meet local needs which cannot be provided in any other

way. The proposal would also conflict with part c) of Policy DM20 of the Local Plan (Part 2) which provides that, amongst other things, residential development in the countryside will only be permitted where it is affordable housing to meet a local need.

Character and Appearance

26. The site is a verdant and tranquil space, set apart from the built-up areas around it by the presence of hedgerow and trees along much of the boundaries to the site. The existing structures on site, whilst in a poor state of repair, nevertheless compliment the rural character of the site which backs onto fields and woodland.
27. The removal of these derelict structures and their replacement with what could potentially be designed as new dwellings of an appropriate appearance in their context and with a new landscape scheme (both to be considered at reserved matters stage), and with a single-storey form common to many nearby properties, would merely serve to maintain the appearance of the area.
28. Additionally, although I note that the Green Belt Study mentioned that development in this location would not have a strong urbanising influence, from the extracts provided it is unclear to what extent the impact of residential uses were considered in coming to that conclusion. Considering this, and the clearly-defined rural context described above, the noticeable uplift in comings and goings above-and-above the present situation and the likely accumulation of domestic paraphernalia on site resulting from the proposed 6 dwellings would have an unduly urbanising effect on the site.
29. Thus, whilst at reserved matters stage the Council would have scope to ensure that the proposed dwellings would be designed to be visually attractive as a result of good architecture, the urbanising impact of the proposed dwellings would harm the character of the area. GA03-Alterations and conversion, found in the VDS, relates to alterations to existing buildings, which is not proposed, and therefore my findings on this main issue remain unchanged.
30. The proposal would therefore have an unacceptable and harmful effect on the character of the area. The proposal would conflict with part i. of Policy ENV3 of the Local Plan (Part 1) which provides that, amongst other things, new development will be required to create buildings, streets and spaces which are sympathetic to the environment and their context in terms of density and in relationship to adjoining buildings, spaces and landscape features.

Highway Safety

31. Local residents have submitted the results of an Automatic Traffic Count Survey, which differs from the evidence shown in the appellant's submitted Transport Technical Note³, in relation to traffic movements, vehicle classes and speeds along Sky End Lane.
32. Even taking account of the maximum number of vehicle movements anticipated by local residents arising from the proposal in the context of the data presented in the Automatic Traffic Count Survey, and noting that Sky End Lane is a narrow rural road, ultimately the proposal relates to 6 dwellings and

³ i-Transport LLP (Ref: ITB16272-002) (1 December 2021)

accordingly would be unlikely to result in severe residual cumulative impacts on the road network in terms of paragraph 111 of the Framework.

33. The proposal incorporates a shared access arrangement along the access way to the site. In this regard, paragraph 110 b) of the Framework provides that, amongst other things, in assessing specific applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users. However, few details have been provided to demonstrate that the needs of disabled people have been appropriately taken into account, with respect to the proposed access way to the site.
34. In particular, it is unclear how blind or partially-sighted people would be able to safely navigate the access way in the event that it was simultaneously being used by a vehicle or vehicles, given the lack of any reference to a conventional kerb on the submitted plans and the fact that larger vehicles (such as delivery vehicles, for example) would in all likelihood occasionally use the narrow access way. Hence, whilst the Local Highway Authority raised no objection to the proposal, including with respect to the proposed visibility splay provided and access for emergency vehicles, in my view the apparent lack of any alternative means for visually-impaired people to navigate their way along the proposed access way is a serious flaw in the scheme as presented.
35. I therefore find that it has not been demonstrated that the proposal would have an acceptable effect on highway safety, including the safety of vulnerable road users. The proposal would conflict with part i. of Policy CCC2 of the Local Plan (Part 1) which provides that, amongst other things, new development will be required to prioritise the provision of safe pedestrian access within developments, and with part iii. of Policy ENV3 of the Local Plan (Part 1) which provides that, amongst other things, new development will be required to create streets which are accessible to those with disabilities or of reduced mobility, that are safe and easy to navigate.
36. The proposal would also conflict with paragraph 111 of the Framework which provides that, amongst other things, development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Ecology

37. The site is adjacent to the open countryside and heavily-wooded areas. The submitted Ecological Assessment Report⁴ (EAR) notes that the immediate and wider landscape is considered to provide good opportunity for local wildlife. Similarly, several local residents have referred to the site as being a haven for numerous types of wildlife, including various species of birds and reptiles.
38. The EAR found that the site was assessed as holding 'low' potential to support foraging and commuting bats, and that at least 8 species of bats including 3 common species and 5 rarer species were recorded on site. It was also noted that the site has the potential to support nesting birds. The EAR noted that the terrestrial habitat is highly suitable for great crested newts, and that 6 ponds are present within 500 metres of the site. The EAR mentioned that surveys revealed a 'good population' of slow worms and a 'low population' of grass snakes on site. The results of the dormice surveys submitted⁵ convincingly

⁴ Ecological Assessment Report (ABR Ecology Ltd) (16 December 2021)

⁵ Letter of 21 September 2022 to the appellant from Cherry Tree Ecology Ltd

demonstrate that dormice are unlikely to be present on site and therefore no further surveys are required at this stage.

39. In this rich ecological context, a detailed ecological mitigation and enhancement strategy has been put forward. The strategy contains a number of sensible and practical measures which relate to the species mentioned above. However, the lack of survey information presented at this stage in relation to the 4 ponds which were inaccessible means that it is unclear if great crested newts are present or absent in those nearby ponds. As such, the number of great crested newts populations (if any) and their potential size and nature is unknown at this stage.
40. The site is deemed in the EAR to contain highly suitable habitats for great crested newts and in this context I do not have sufficient evidence to ascertain the likely impact of the proposed development on great crested newts, which potentially could reside in the nearby ponds. Additionally, as a mitigation strategy is proposed to be compiled following the completion of any required surveys, few details have been provided at this stage to demonstrate that any such mitigation measures would be effective in avoiding or mitigating adverse effects.
41. In the circumstances, as any outline permission would itself comprise the planning permission, I must take a precautionary approach which requires that planning permission cannot be granted in the absence of evidence demonstrating that there would be no adverse effects on protected species, or that mitigation measures would be effective.
42. I therefore find that it has not been demonstrated that the proposal would have an acceptable effect on ecology, including protected species. It would conflict with Policy DM2 of the Local Plan (Part 2) which provides that, amongst other things, development will not be permitted which would adversely affect species of fauna or flora that are protected under national or international law, or their habitats, unless their protection can be adequately secured through conditions and/or planning obligations. The proposal would also conflict with part iii. of Policy STR1 of the Local Plan (Part 1) which provides that, amongst other things, new development should avoid wherever possible or mitigate where necessary the direct and indirect impacts of development on species or habitats of nature conservation value.

Other Considerations

43. The Framework makes it clear at paragraph 148 that substantial weight is given to any harm to the Green Belt. It establishes that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
44. As the proposed dwellings would encompass the same amount of floorspace as currently taken up by the existing sheds on site, the proposal would not conflict with paragraphs 138 a) and b) of the Framework, which establish that 2 of the purposes of the Green Belt are to check the unrestricted sprawl of large built-up areas and to prevent neighbouring towns merging into one another. However, these are neutral factors, which do not weigh in favour of the proposal. As the site relates to rural rather than urban land, and it has not

been demonstrated that Hordle is a historic town, neither paragraph 138 d) nor paragraph 138 e) of the Framework provide support for the proposal.

45. The proposal would support the Government's objective of significantly boosting the supply of homes by way of providing 6 residential units as affordable housing, aimed at families seeking to live within the New Forest in their first new home, which in the context of the Council's lack of a 5 year housing supply attracts moderate weight in favour of the proposal.
46. The proposal would result in the removal of ground contamination currently present on site and would result in an overall improvement to the nutrient balance within the Hordle Nitrate Zone when compared to the poultry farm use.
47. However, the benefits in terms of the de-contamination of the site would be limited by the size of the site, which is less than 1 hectare, and that only 2 sheds are present within it. Additionally, as the poultry farm is not currently operating it is unclear whether the site is presently contributing to nitrate discharges, and it has not been demonstrated that the resumption of the previous poultry farming activities on site would be likely prospect in the foreseeable future. Accordingly, these matters, taken together, only attract moderate weight in favour of the proposal. A number of measures have been put forward with the aim of enhancing ecology on site, although few details have been provided to accurately quantify the likely benefits in this regard, meaning that these ecological benefits attract limited weight in favour of the proposal.
48. With respect to one of the sheds on site, reference has been made to an application under Class R of Part 3 of Schedule 2 of the GPDO. Whilst the Council have raised queries in relation to the nature of any physical works proposed to be undertaken in conjunction with Class R, it appears from the information before me that there is a real prospect of this fallback position being implemented. In these circumstances, part of the site would be in active use, potentially resulting in some degree of sprawl over the site and a reduction in the openness of the Green Belt. Taking this into account, and considering that only one of the 2 sheds is proposed to be converted under Class R, this matter attracts no more than moderate weight in favour of the proposal.

Other Matters

49. Few details have been provided to substantiate the assertion that the resumption of the use of the site as a poultry farm would be a realistic prospect in the near-term. Indeed, the recent application made under Class R (mentioned above) casts further doubt on this prospect. Hence, this matter does not change my findings on the main issues in this appeal.
50. The Council considers that the proposal has the potential to have a significant effect on the New Forest and Solent Coast European sites. However, following my conclusion below, as I am dismissing the appeal for other reasons, there is no need to consider the potential implications of the proposal in this respect. I therefore make no further comments on this matter.

Balancing of Considerations

51. The proposal would be inappropriate development in the Green Belt and would result in a reduction in its openness. These matters carry substantial weight.

Moreover, the site would not be a suitable location for new housing, with particular regard to the settlement strategy for the area, which is a matter to which I accord considerable weight.

52. The proposal would also have an unacceptable and harmful effect on the character of the area, and it has not been demonstrated that the proposal would have an acceptable effect on highway safety, including the safety of vulnerable road users, which are matters to which in combination I accord significant weight. Furthermore, it has not been demonstrated that the proposal would have an acceptable effect on ecology, including protected species, which is a matter to which I accord great weight.
53. Taking all of the other considerations into account, including the representations received in support of the proposal and the pre-application advice supplied by the Council, as a matter of planning judgement I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the proposal do not exist. Therefore, the proposal would not comply with the Green Belt aims of Policy ENV2 of the Local Plan (Part 1), or the Framework, and consequently would be unacceptable.
54. The lack of a 5 year housing supply means that the policies which are most important for determining the appeal are deemed to be out-of-date in accordance with paragraph 11 d) of the Framework. However, part i. of paragraph 11 d) clarifies that permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance, including Green Belt, provide a clear reason for refusing the development. As I have explained, there would be harms to the Green Belt that would not be clearly outweighed. This provides a clear reason for refusing the proposed development. Therefore, the proposal would not benefit from the presumption in favour of sustainable development in this instance.

Conclusion

55. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR