



Appeal Decision

Site visit made on 30 August 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2023

Appeal Ref: APP/L3625/W/22/3312840

Fontigarry Farm Business Park, 7 Reigate Road, Sidlow RH2 8QH

- 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 K Measures against the decision of Reigate and Banstead Borough Council.
 - The application Ref 20/01512/F, dated 6 July 2020, was refused by notice dated 13 June 2022.
 - The development proposed is the demolition of the existing buildings and structures. Erection of 8 bungalows with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The main parties agree that the proposed development would comply with the exception for new buildings in the Green Belt set out in Paragraph 149.g) of the National Planning Policy Framework (the Framework), in that it would constitute the redevelopment of previously developed land, which would not have a greater impact on the Green Belt than the existing development. Based on the evidence before me and my observations at the site, I see no reasons to disagree with this conclusion.

Main Issues

3. The main issues are:
 - the effect of the proposed development on employment provision within the area, and if there is harm whether it is outweighed by public benefits.
 - the effect that the amount of parking provided within the proposed development would have on the living conditions of existing and future occupiers.

Reasons

Employment provision

4. Employment premises in the Borough are under increasing pressure from alternative uses and the purpose of Policy EMP4 of the Reigate & Banstead Development Management Plan (Adopted September 2019) (the DMP) is to recognise the importance of safeguarding viable employment land and premises, whilst also recognising that such land should only be protected if there is a reasonable prospect of employment use.

5. Policy EMP4 of the DMP states that the loss of employment land will only be permitted if it has been clearly demonstrated, through the submission of the evidence set out in Annex 3, that there is no reasonable prospect of (or demand for) the retention or redevelopment of the site for employment use; it would enable a demonstrable improvement in the quality and suitability of employment accommodation, or the proposal would provide a public benefit to outweigh the loss of the employment floorspace. Annex 3 of the DMP requires demonstration of an active marketing campaign for a continuous period of at least 6 months, along with minimum evidential requirements to support such proposals.
6. The evidence before me in this appeal does not include a marketing campaign for the appeal land and buildings. It is the appellant's contention that the overriding issue is not a matter of whether the units have not attracted a tenant, but rather that they will be unlettable in 2023 in their existing conditions.
7. The main parties agree that the existing buildings are of a low quality and lack satisfactory insulation or fixed heating systems. According to the appellant they are unlikely to meet the minimum energy efficiency requirements and from April 2023, there will be a legal requirement for all commercial premises with existing tenancies in place (not just new lettings) to achieve an EPC with a rating of E or above. Therefore, existing tenancies will need to be terminated unless substantial and costly refurbishment of the buildings are undertaken to bring them up to a suitable condition and achieve regulatory compliance for letting to tenants post April 2023. This would involve the rebuilding of at least some of the units.
8. The appellant's Estate Agent and Property Consultant considers that even if the buildings were in suitable condition to let, it would be difficult to attract suitable tenants for the buildings for a range of reasons. These include the style of construction of the buildings, the absence of running water and toilet facilities within the buildings and the reliance upon shared toilets, the layout of the site, its means of access and the inability to park vehicles near the buildings.
9. Although I observed cracks to the walls of some of these buildings, many were of substantial blockwork construction, with corrugated roofs and plastic windows, and most appeared weathertight. Evidence of occupancy rates or current tenants are not before me, however it was apparent to me at my site visit that several buildings were in fact being occupied post April 2023, particularly some of the buildings closest to the site frontage where occupiers were engaged in activities and a few vehicles were parked close to some units. In the absence of evidence to the contrary, my observations cast significant doubt on the appellant's assertions regarding the inability to let the buildings post April 2023.
10. On the evidence before me it is difficult to reach any definitive conclusion as to the quantitative scale of the loss of economic activity in the Council's area that would result from the appeal proposal. Nonetheless, the proposal would result in the loss of employment buildings and land, including several buildings showing evidence of occupation. If planning permission was to be granted, I have no certainty that current occupiers of the site would be able to relocate to other premises in the area.

11. The main parties dispute whether there has been a reduction in vacancy rates between the Council's Industrial Estates Monitor reports in 2018 and 2021. The development of allocated industrial sites in the DMP are said by the appellant to increase the supply further. Even if there has been little change in vacancy rates over that period, as opposed to the reduction indicated by the Council's reports, and that vacant units are currently available in established industrial estates, this does not outweigh the policy requirement for a marketing campaign. Furthermore, there is no evidence to demonstrate that occupiers of the appeal site would necessarily be able to relocate their businesses to those vacant sites.
12. Farm diversification, including utilising Class R permitted development rights to convert buildings to employment use might be increasing the supply of storage and industrial units in the Council's area, or saturating the market for employment premises according to the appellant, including on land outside of the Green Belt, leading to a surplus. However, I have no substantive evidence to support this contention or that the employment floor space provided on those other developments necessarily meets the latest sustainability standards.
13. Even if the capital costs of improving the site to allow for it to continue to function in its present uses are significant, this does not dispense with the need to undertake a marketing campaign to demonstrate there is no reasonable prospect of (or demand for) the retention or redevelopment of the site for employment use as required by Policy EMP4 of the DMP. The wording of Policy EMP4 indicates that it does not apply solely to employment land and buildings that are occupied and in use.
14. For these reasons the evidence before me has failed to demonstrate that there is no reasonable prospect of (or demand for) the retention or redevelopment of the appeal site for employment use. Therefore, the loss of the employment land and buildings is unjustified and would harm the employment provision and the economy in the area.

Public benefits

15. As set out above, Policy EMP4 of the DMP allows for the loss of employment land and premises where the public benefits provided would outweigh the loss of the employment floorspace.
16. The character and appearance of the area is predominantly rural with a scattered pattern of residential and commercial buildings set amongst open fields. The employment buildings on the appeal site are arranged within a relatively tight-knit group that is set back from the Reigate Road, behind a belt of trees and planting, and a surface parking area. Although the buildings vary in scale and appearance, most are low rise structures, particularly those close to the front of the site, along with some portable buildings and a timber pole barn. The larger buildings to the rear of the site appeared to be set on lower ground, behind those closer to the front and are therefore substantially hidden in views from the road. Together, the compact layout of the group of buildings, their low roof heights and the screening effect of the trees and planting, serves to limit their visibility in public views and they have a relatively low-key presence in the area.
17. In this context, I concur with the Council that the proposed group of similar style single storey bungalows would be somewhat different to the established

character and appearance of the area. Nonetheless, the appeal proposal would replace some unsympathetic buildings in the Green Belt and the main parties agree that the proposed dwellings would be of a satisfactory layout, siting and design, and additional landscaping could be secured by planning conditions to soften the appearance of the proposed development. The evidence suggests that compared to the existing buildings the proposed dwellings would have a reduced volume and floor area, but with a broadly similar spread across the appeal site, although I note that the drawings appear to show plot 5 as located on a part of the site absent from buildings.

18. For these reasons, I find that the appeal proposal would not have a greater degree of harm to the openness of the Green Belt, and there is likely to be a modest enhancement to the openness of the Green Belt, along with a positive visual impact on the character of the area. Taking account of my observations on the appeal proposal's effects on the openness of the Green Belt and the character and appearance of the area, I find that the appeal proposal would have modest beneficial effects that weight moderately in its favour.
19. The main parties have not commented on the housing need and current land supply in the Council's area. However, of the appeals submitted by the appellant, the most recent decision (APP/L3625/W/20/3257912) found that the provision of 4 dwellings would make a contribution to housing supply in the Council's area and it attracted very significant weight in that appeal. Based on the evidence before me and the scale of the proposal, I find that significant weight should be given to the appeal proposal's small but valuable contribution to housing supply.
20. The proposed bungalows could meet a demand for smaller homes, particularly for older and less mobile persons, as well as providing an opportunity for downsizing, albeit this is a neutral factor in the absence of substantive evidence of either a need for, or shortage of such homes, along with the absence of any mechanism to control the occupancy of the dwellings.
21. The environmental benefits of biodiversity enhancement and landscaping would arise partly through mitigation of the proposed development's effects, and by generating a proportion of the energy needs of the development through renewable energy sources, leading to a reduction in carbon emissions. Given the scale of the development, these benefits weigh modestly in its favour.
22. The proposed dwellings would generate short-term employment opportunities and economic activity associated with the construction works and its supply chains, and long-term benefits through the new resident households supporting the businesses and services within the economy. However, in attributing weight to these economic benefits, I must have regard to the permanent loss of employment land and associated economic activity from the area and the absence of certainty regarding businesses at the appeal site relocating elsewhere. On the evidence before me, the economic activity associated with the construction and occupation of the appeal development would not weigh positively in its favour.
23. I have no substantive evidence that redevelopment of the site for a commercial use meeting the needs of modern business would necessarily result in a greater scale of development and in conflict with the Green Belt as a planning constraint. Nor I am satisfied on the evidence before me that the proximity of the site to other residential properties would preclude or make it otherwise

unsuitable for employment uses. Whilst just a snapshot in time, I did not detect during my site visit any significant industrial type noises associated with the existing uses and I have not been referred to any complaints or concerns raised with the Council about commercial uses at the site, which have been undertaken for some years.

24. Taking account of all the above, I acknowledge that the appeal proposal would deliver public benefits, however these are outweighed by the substantial weight that I attach, in the absence of evidence of a marketing campaign, to the loss of employment land and associated economic activity. On this basis, I find there is conflict with Policy EMP4 of the DMP in this regard.

Parking

25. Based on the evidence submitted I am satisfied that the shortfall of car parking spaces for visitors can be accommodated in the broad locations shown on the drawing in Appendix 7 of the appellant's statement. The car parking spaces indicated on the layout drawing would not be located in places where parked cars would make it difficult to manoeuvre a vehicle along the estate roads. They would not be likely to cause congestion within this small housing development where vehicle movements along the proposed development's cul-de-sac road layout would be commensurately low. Although some potential spaces for parking visitors' cars are shown as obstructing access to and from on-plot parking spaces for residents, vehicles parked in these locations would most likely be parked with the permission of the property's occupiers.
26. For these reasons, I conclude that the amount of parking provided within the proposed development site would not harm the living conditions of existing and future occupiers. As such, the proposal would comply with Policies TAP1 and DES1 of the DMP, which, amongst other objectives, seek to ensure that car parking accords with local standards unless satisfactory evidence is provided to demonstrate that non-compliance would not result in unacceptable harm, and that an appropriate environment for future occupiers and adequate provision for parking would be provided.

Other Matters

27. Loss of employment land was not a main issue in the appeal at Nutley Dean Business Park (APP/L3625/W/17/3189035), which was determined in August 2018, thus pre-dating adoption of the DMP and the policies on which the appeal decision before me was considered. As such it has limited relevance to my considerations in this appeal.
28. The officer reports for the planning permissions granted by the Council for residential development following the removal of industrial buildings at Nutley Dean Business Park (18/02680/FUL) in January 2019, and the removal of workshops at 102 Horley Road Redhill (19/01623/F) in September 2019, are not before me in this appeal. As such, it has not been shown whether their circumstances are comparable with the appeal proposal before me, and whether either was subject to a marketing exercise. Furthermore, the Nutley Dean Business Park decision predates the adoption of the DMP, and was therefore likely to have been considered under a different policy context. As such, these decisions have limited relevance to my considerations in this appeal.

29. My attention is drawn to appeal decision APP/L3625/W/20/3257912 for the demolition of a redundant riding school and the erection of four new dwellings, as an example of housing being approved. However, that appeal was for a materially different development involving the loss of a community facility and unlike the appeal proposal before me it was supported by marketing evidence. Furthermore, it was in a reasonably sustainable location within walking distance of public transport and with local shops within 1 kilometre (km) away, whereas the appeal site before me is described by the Council as located in an area of low accessibility that is reached via an unlit road with no formalised pedestrian footpath to reach the bus stops some 1km away. As such, it has limited relevance to my considerations in this appeal.

Planning balance and Conclusion

30. Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found conflict with Policy EMP4 of the DMP.
31. Neither of the main parties has submitted substantive evidence of the Council's current housing land supply. However, I acknowledge that the Inspector in appeal APP/L3625/W/20/3257912 found that the Framework's presumption in favour of sustainable development applied in the Council's area.
32. Even if the policies which are most important for determining the appeal proposal are deemed out-of-date in accordance with Paragraph 11.d) of the Framework, such that planning permission should be granted, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. I have already found that the significant social benefits and the modest environmental benefits of the appeal proposal would be outweighed by the appeal's proposal's substantially harmful effect on the local economy.
33. I acknowledge that the proposal would contribute to boosting housing supply on a small to medium sized site which the Framework suggests can make an important contribution to housing supply and are often built-out quickly.
34. The appellant suggests the appeal site is under-utilised and in accordance with the Paragraph 120 of the Framework, the appeal proposal would help meet identified needs for housing where land supply is constrained. However, I have no evidence to substantiate the underutilisation of the land and even if I had, the land would nonetheless offer the potential for redevelopment for economic purposes, justifying its marketing to test whether there is a reasonable prospect of (or demand for) the retention or redevelopment of the site for employment use, as required by Policy EMP4 of the DMP.
35. I am referred to Paragraph 123 of the Framework. which indicates that local authorities should take a positive approach to applications for alternative uses of land which is currently developed where this would meet identified needs. This includes supporting use of employment land for homes in areas of high demand, provided that it would not undermine key economic sectors and would be compatible with other policies in the Framework.
36. The Council's objection to the appeal proposal is based primarily on the appellant's failure to demonstrate clearly through an appropriate marketing

campaign that there is no reasonable prospect of (or demand for) the retention or redevelopment of the site for employment use. Appropriate marketing of the land could demonstrate this to be the case and if so, the proposed housing development would not demonstrably undermine the Council's objective of safeguarding viable employment land and premises that contribute to the economy. If that was to occur, the delivery of the acknowledged benefits of the proposed development, including to the supply of housing in the area, would merely have been deferred were I to dismiss this appeal, and not lost.

37. Based on the evidence before me, I find that the appeal proposal's adverse impact on the economy would significantly and demonstrably outweigh the totality of the benefits when assessed against the policies in the Framework as a whole. Therefore, the proposal does not benefit from the presumption in favour of sustainable development under Paragraph 11 of the Framework.
38. My overall conclusion is that the evidence before me has failed to demonstrate that there is no reasonable prospect of (or demand for) the retention or redevelopment of the appeal site for employment use, or that the proposal would provide a public benefit which would outweigh the loss of employment land and the resultant harm to the local economy. As such, it would be contrary to Policy EMP4 of the DMP.
39. For the reasons given above and having considered all matters raised, I conclude that the proposed development conflicts with the development plan, when read as a whole. There are no material considerations of sufficient weight, including the provisions of the Framework, to outweigh this finding. The appeal should be dismissed.

G Sylvester

INSPECTOR