



Appeal Decision

Site visit made on 8 January 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2024

Appeal Ref: APP/Y3615/W/23/3323077

South Cottage, Redhill Road, Cobham KT11 1EF

- 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 Jake and Mrs Jasmin Johnson against the decision of Guildford Borough Council.
 - The application Ref 22/P/01784, dated 20 October 2022, was refused by notice dated 13 March 2023.
 - The development proposed is demolition of buildings, removal of hardstanding and the erection of two detached dwellinghouses, with landscaping, parking and access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework was revised on 19 December 2023 (the Framework). There are no relevant material changes. I have referred to equivalent re-numbered paragraphs or footnotes where necessary.
3. At my request the Council provided an explanation of what it considers to be its current 5-year housing land supply position. It also commented on the Housing Delivery Test. I have taken this into account in determining the appeal. The appellant did not submit any additional comments in these respects.

Background and Main Issues

4. The site was a horticultural nursery in countryside in the Green Belt. It was last used some three years ago as a cattery by adapting nursery buildings or hardstanding and erecting some bespoke buildings. Some buildings appear to be, or were, in ancillary residential use and two are lived in by tenants with another currently unoccupied. The site would be completely redeveloped by two detached houses with gardens and as additional garden space for the appellants who live next to the site in South Cottage. The main issues are:
 - whether the proposal is inappropriate development in the Green Belt, including its effect on openness, having regard to local and national planning policy;
 - its effect on the Thames Basin Heaths Special Protection Area; and
 - whether any harm by reason of inappropriateness, or any other harm, is clearly outweighed by other considerations to amount to very special circumstances required to justify the proposal.

Reasons

Planning policy

5. Policy P2 of the Guildford Borough Local Plan: Strategy and Sites, April 2019 (LPSS) resists inappropriate development in the Green Belt unless there are very special circumstances. It also sets out that the construction of new buildings in the Green Belt will constitute inappropriate development unless they are within the list of exceptions identified by the Framework. Additionally, very special circumstances will not exist unless potential harm to the Green Belt by inappropriateness and any other harm is clearly outweighed by other considerations.
6. These aspects of LPSS Policy P2 are consistent with objectives of the Framework to protect Green Belt land and to regard the construction of new buildings as inappropriate development in the Green Belt, subject to certain exceptions. In this case, paragraph 154 g) is relevant which includes the complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development. The Framework also sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Whether inappropriate development

7. The Framework definition of previously developed land refers to land which is or was occupied by permanent structures (such as buildings) and any associated fixed surface infrastructure (such as hardstandings). It excludes land that was previously developed but where the remains of the permanent structure or fixed surface infrastructure have blended into the landscape.
8. The appellants' Inspection Report (IR)¹ and Design and Access Statement (DAS)² list nearly all of over 30 buildings on the site as permanent buildings (except 13A and 22). Though some of these have not been well maintained they are of innate substantial construction, including wholly or mainly brick, rendered, concrete block or glazed elevations, solid floors, integral foundations and tiled or glazed roofs. As such, 2-5, 7-13 and 14 are permanent buildings.
9. The IR considers other buildings permanent including due to 'substantial foundations' and existing on the site for more than 28 days. The latter is not in dispute but relates to the definition of a temporary building exemption for building regulations, not planning purposes. There is no evidence that all foundations were integral or contemporary to the construction of all these other buildings; as opposed to, for example, convenient repurposing of pre-existing foundations or hardstanding including after previous building removals.
10. These other buildings essentially have timber floors with bearers and timber elevations and roofs with felt or corrugated sheet plastic or metal covering, one with tiles overlaid. Even if they were all erected on the site (not pre-assembled and delivered to it) they simply sit on concrete, paved, tiled or brick bases. Some are, or are akin to, domestic garden sheds or Wendy houses and many are, or incorporate, external caged 'cat runs' enclosed by no more than wire

¹ Stiles & Co Chartered Surveyors, August 2022 - including Appendix D with drawing no.501

² Including Table 1

mesh supported by timber frames. Electricity supply and former active use is not determinative of permanence.

11. The IR is not a condition survey but describes building 1 as 'semi-dilapidated', yet the DAS lists it as a permanent building and its footprint area is counted towards demolitions. Three buildings (two in the group at 25 and 28) did not exist when inspected but the footprint areas have been included in the DAS as demolitions.
12. Although some of these other buildings may have been on the site for years and many or all could remain in situ for some time, the fabric and structure of 15-27 (including in groups where still present), 29, 31 and 32 is essentially constructed of inherently temporary materials above ground. Most of these are largely neglected, dilapidated or derelict and would require significant reconstruction, alteration, repair or refurbishment for beneficial use. These are not, therefore, permanent buildings nor designed as such from the outset.
13. Hardstanding around and between the main complex of buildings in the north and east parts of the site is largely intact³. However, some next to South Cottage not in the site has been counted in the DAS as to be removed. The regimented 'paths' that cross other parts of the site no longer exist or are largely overgrown. They are not apparent in any meaningful way and mostly flow seamlessly into adjoining grassed areas so blend into the landscape, including largely the foundations of removed buildings in the group at 25. Much of the hardstanding immediately north of buildings 1 and 2 (and as was 28), up to 3 and 4, no longer exists or has been covered over as a result of significant earth movements or reprofiling of this part of the site so it also blends into the landscape.
14. Consequently, while there is previously developed land on the site, in my view it is significantly less than that suggested by the appellants. In terms of permanent buildings, around a third less – from 965 sqm footprint area to about 676 sqm (or 707 sqm floorspace with the two-storey part of building 8)⁴. In terms of hardstanding, and as I understand the figures provided by the appellants, roughly also a third less – from around 1,828 sqm to about 1,206 sqm. So, still greater than the proposed houses (about 411 sqm footprint in total) and hardstanding (464 sqm) and would result in appreciably less absolute site coverage compared to the existing permanent buildings and hardstanding.
15. However, the houses would have materially more floorspace over two floors (total of 758 sqm) than the mostly smaller, single-storey permanent buildings on the site. While no volumetric calculations have been provided, and despite a one and half storey form with some accommodation in the roof, the increased overall form, scale, massing and bulk of buildings would protrude upwards on the site to an appreciably taller ridge height. In my view, this would not offset their tighter grouping in comparison to the more scattered distribution of buildings on the site because these are mostly single storey and not permanent. Nor would the reduction in hardstanding offset this impact because it has notably less presence on the site at ground level.

³ As shaded grey in drawing no.501

⁴ All figures rounded to the nearest sqm

16. The Framework sets out that it should not be expected that all of the curtilage of previously developed land should be developed, in this case by change of use to residential gardens. Most of the site would as a result likely be maintained as lawn and regularly used in association with residential use and occupation of the houses, including for play, relaxation or entertaining with associated domestic paraphernalia. This this spread and consolidation of residential use and activity into the countryside would give a significantly different appearance to the most open parts of the site which mainly appear as rough, natural grassland with trees or hedgerow akin to a field in this part of the countryside.
17. Even if there were up to 300 cats kept on the site, there is no objective evidence about the hours or times of year the cattery operated, including at this maximum intensity. Nor about deliveries or number of staff or customers on the site or traffic generated in these regards, thus the actual level or nature of activity at the site overall.
18. Considering all the above, parts of the site would no longer be developed in any equivalent or comparative sense to its current condition. It would not remain unchanged but take on an entirely distinctly different domestic complexion. While this would be apparent mainly to those who lived in the houses or next to the site in South Cottage or the adjoining house at Little Foxwarren⁵, or to visitors, the arrangement of built form and residential use would have a permanent innate spatial presence and a clear visual presence in the countryside in the Green Belt.
19. I therefore find that the proposal would have a greater impact on the openness of the Green Belt than the existing development. Albeit a small loss overall and within the general extent of the previously developed land, this would nonetheless reduce the openness of the Green Belt, which is one of its essential characteristics, at odds with a purpose of the Green Belt to safeguard countryside from encroachment. As such the proposal is contrary to LPSS Policy P2 and fails to meet the exception in Framework paragraph 154 g). Consequently, it is inappropriate development in the Green Belt.

Thames Basin Heaths Special Protection Area (the SPA)

20. The site is within a zone of influence of the SPA which is a European site protected due to habitat and species important for nature conservation, including lowland heath and ground nesting or breeding birds. Alone or in combination with other development there is therefore potential for the proposal to cause damage or disturbance likely to have a significant effect on the integrity of these features of the SPA, such as by reason of increased residents recreational use of land in the SPA.
21. The appellants intend to make financial contributions towards the provision of Suitable Accessible Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) in accordance with an avoidance strategy adopted by the Council and endorsed by Natural England⁶. They consider this would overcome the Council's second reason for refusal and during the appeal submitted a draft unilateral undertaking (UU) in this respect. There is no apparent reason why an executed UU was not submitted in accordance with the

⁵ Also referred to as 'Little Fox Warren' and 'Little Warren'

⁶ Thames Basin Heaths Special Protection Area Avoidance Strategy Supplementary Planning Document, July 2017

responsibilities and timetable for submitting planning obligations such as the UU in the appeal process⁷. No other mitigation has been suggested.

22. In these circumstances, as the competent authority in this appeal and after Appropriate Assessment⁸, I find that in the absence of suitable mitigation the proposal would harm the nature conservation interests of the SPA so adversely affect its integrity. Consequently, it is contrary to saved Policy NE4 of the Guildford Borough Local Plan, January 2003, to LPSS Policy P5 and to saved Policy NRM6 of the South East Plan, May 2009. These policies include that development should not cause adverse effects on the ecological integrity of a special protection area or harm to protected animals, plants or habitat in such an area by making appropriate provision for mitigation.
23. Even if a suitable executed UU had been submitted it would not have altered my findings about the Green Belt.

Other considerations

Provision of housing

24. The Council can demonstrate a five year supply of deliverable housing sites with an appropriate buffer and it meets the Government's Housing Delivery Test. Consequently, by virtue of footnote 8, Framework paragraph 11 d) is not engaged and the presumption in favour of sustainable development does not apply in this appeal.
25. The appellants allege that buildings 3, 5 and 8 have been used as dwellings for 'many years' or 'over ten years'. While they may have existed for this long on the site, the Council recognises 5 and 8 for Council Tax purposes since 2021 and not at all for 3. There is no objective evidence of any established dwellinghouse use on the site for planning purposes, such as a certificate of existing lawful development.
26. The Council did not object to the location of the proposed houses per se and the proposal would result in a net gain of two permanent, energy and water efficient 4-bedroom dwellings on this presently under-utilised windfall site and could be built relatively quickly. This would be aligned with objectives of the Framework to significantly boost the supply of homes, make effective use of land, meet specific housing needs of families and meet the challenge of climate change. The social and economic benefits of constructing and occupying two houses would be limited so they have modest weight.

Permitted development rights and conditions

27. A planning condition could control permitted development rights for future extension or enlargement of the houses, provision of outbuildings or further hard surfaces which would otherwise increase built form on the site⁹. This would not, though, overcome the innate size of each house or garden to begin with and it would be unreasonable and unenforceable to restrict domestic activity in the proposed gardens. The appellants did not object to all bar one of the Council's suggested conditions but these would not overcome the adverse impact on the Green Belt or the SPA.

⁷ Section 18 (and in particular 18.2 and 18.2.2) of the Procedural Guide: Planning appeals – England

⁸ The Conservation of Habitats and Species Regulations 2017 (as amended)

⁹ Schedule 2, Part 1 - The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Character and appearance of the area and biodiversity

28. While removal of most buildings and hardstanding on the site would have a positive effect on the character and appearance of the area, not all the buildings are intrinsically at odds with their rural setting, especially if well maintained. There is no evidence that the proposed houses and gardens are the only way to achieve these environmental benefits, which though notable therefore have less weight than suggested by the appellants. Subject to conditions the proposal would retain important trees, result in additional landscaping and achieve biodiversity net gains on the site. These important environmental benefits would be limited in extent so have modest weight.

Other development

29. The proposed houses are smaller than two houses previously refused planning permission on the site¹⁰. I have also been informed of the size of Little Foxwarren. However, neither consideration alters the comparison between what exists on the site now and what is proposed in this appeal, which I have considered on its individual planning merits.

Other matters

30. The proposal would be acceptable with regard to flood risk, drainage and density and is not in a conservation area or in the setting of a conservation area or a listed building. It would be suitable in terms of parking, access and traffic generation and amenity for occupiers of existing dwellings and the proposed houses. The absence of harm in these regards is a neutral factor in my decision. An interested party who owns adjoining land has enquired about the appellants' use of a garage next to the site but is a matter for the Council.

Green Belt Balance

31. The proposal is inappropriate development in the Green Belt contrary to local and national policy to protect the Green Belt. It would also cause significant harm to the nature conservation interests of the SPA so adversely affect its integrity. Each of these considerations has substantial weight against the proposal. Accordingly, the other considerations outlined above in support of the proposal would not individually or collectively clearly outweigh the harm to the Green Belt due to inappropriateness or the harm to the SPA. Consequently, very special circumstances to justify the proposal do not exist.

Planning Balance and Conclusion

32. The proposal conflicts with the development plan overall and with relevant provisions of the Framework. There are no other material considerations to indicate that the decision should be taken other than in accordance with the development plan¹¹. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR

¹⁰ 21/P/01488

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 (as amended) and Framework paragraph 12