



Appeal Decision

Hearing held on 19 November 2024

Site visit made on 19 November 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2024

Appeal Ref: APP/J1535/W/24/3349818

Northfield Nursery, Sewardstone Road, Waltham Abbey Essex E4 7RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Alan Harker against the decision of Epping Forest District Council.
 - The application Ref is EPF/0314/24.
 - The development proposed is the change of use from a horticultural nursery (Sui Generis Use Class) to a garden centre (Use Class E).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from a horticultural nursery (Sui Generis Use Class) to a garden centre (Use Class E) at Northfield Nursery, Sewardstone Road, Waltham Abbey, Essex E4 7RG in accordance with the terms of the application, Ref EPF/0314/24, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have taken the site address from the planning application form. I have removed from the description of development the reference to the retrospective nature of the proposal and the length of time it is claimed that the use has been operating on the site as neither are acts of development.

Main Issues

3. The main issues are:
 - a) whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies including, where applicable, its effect on openness; and
 - b) if the development would be inappropriate development in the Green Belt, 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

4. Policy DM4 of the Epping Forest District Local Plan 2023 seeks to resist inappropriate development in the Green Belt. It identifies a limited number of

exemptions where development in the Green Belt may be permitted. These exemptions are not fully reflective of all those listed in the National Planning Policy Framework (the Framework) but for the purposes of this appeal there is broad consistency between the two documents.

5. The Council considered the proposal under the exemption in Paragraph 154 (g) of the Framework and concluded that the lawful horticultural use prevented the site being considered as previously developed land. In contrast the appellant considered the proposal to meet the exemption in Paragraph 155 (d), with the external sales area also considered to potentially fall within the material change of use exemption in Paragraph 155 (e). None of the other exemptions to inappropriate development set out in Paragraphs 154 and 155 were identified at the Hearing as being relevant to the proposal.
6. As there is no challenge to the Council's approach in relation to paragraph 154 (g), there is no need for me to address that exemption in my decision.
7. Paragraph 155 (d) allows for the re-use of buildings provided that the buildings are of permanent and substantial construction. This is on the proviso that the proposal also preserves Green Belt openness and does not conflict with the purposes of including land within it. There is no disagreement between the main parties that the buildings are permanent and of substantial construction. As such, the key issue under this exemption would be whether the proposal would preserve Green Belt openness and not conflict with the purposes of including land within it.
8. Recent case law has established that for a use to fall within Paragraph 155 (e) the proposed use should be very closely aligned to those examples given in the 'such as' list of examples that are within brackets in the paragraph: "for outdoor sport or recreation, or for cemeteries and burial grounds". That would not be the case for an external sales area and as such Paragraph 155 (e) would not be applicable in this case.

Openness

9. In relation to the spatial component of openness, there would be no change to any of the existing buildings on site. At the Hearing the Council accepted that this would be the case. Consequently, this would not have an adverse effect on the openness of the Green Belt.
10. The appellant acknowledges the site is currently operating as more than just a horticultural nursery and has evolved its garden centre operations over time. It is therefore suggested that the change from horticultural nursery to garden centre would not, in any practical sense, have a material effect. However, the appellant acknowledged at the Hearing, and as I saw at the site visit, any garden centre activity could at present best be described as 'low key'.
11. The Council expressed concern at the Hearing that given this existing low base, there is potential for a lawful garden centre to offer an increased range of goods and services resulting in more customers at the site. This would lead to additional car parking and a general increase in the levels of activity. These would, it is contended, have an adverse visual effect on openness.
12. Nowadays, most garden centres offer a range of different products covering the home and garden, as well as cafes and other concessions. Whilst I accept that the current buildings inherently limit the extent to which the customer

offer could be upgraded, they do not make it entirely impossible to expand the range of goods and services on offer. This would in turn be likely to find expression in more people, cars and general uplift in activity and movements.

13. The appellant has not provided any data or comparable evidence to indicate what could reasonably be expected from a garden centre use in terms of vehicle movements etc. However, any uplift in parking and movement of vehicles, and comings and goings of customers associated with a garden centre are likely to be intermittent activities that would generally take place within what are the existing car park and public areas. The main parties have agreed that the opening times for the site would not be extended and that this would be controlled by conditions.
14. It seems to me that the parking of cars and general levels of activity associated with a garden centre would be transient with an ephemeral impact, only occurring at limited times. In visual terms, these areas are in part screened from wider views by trees on the boundaries, and although visible from nearby houses they are not prominent from surrounding vantage points.
15. The external sales areas are set behind and/or enclosed by the existing buildings and tree planting. Having viewed the site, it seems to me that they could reasonably be considered as being associated with the wider proposals. These areas are currently delineated on the submitted block plans. As discussed at the Hearing, it would be possible to impose conditions so that going forward, any external display and sales areas were limited to those existing areas and as such, there would be no harm to the wider openness of the Green Belt.
16. I am mindful that an unfettered permission for a garden centre would allow for a change to other uses within Use Class E. Whilst the existing buildings may similarly limit the extent to which these other activities could be undertaken, given the limited information provided, I cannot be sure that they would not lead to a more significant uplift in vehicle movements or change in activity or people on the site, when compared to the lawful use. As this might have a different outcome in terms of openness, I have based my considerations on the change being limited to just a garden centre.
17. Preservation of openness does not mean that no change can occur and taking all of the above into consideration, the change to a garden centre would not have an impact on openness to the extent that openness would not be preserved.

Green Belt Purposes

18. Paragraph 143 of the Framework identifies that Green Belts serve five purposes: a) to check the unrestricted sprawl of large built-up areas; b) to prevent neighbouring towns merging into one another; c) to assist in safeguarding the countryside from encroachment; d) to preserve the setting and special character of historic towns; and e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
19. The site is away from any built-up areas or historic towns, so would not contribute to the sprawl or merger of urban areas or affect their setting or character. The proposal involves the conversion of buildings within an existing site, so there would be no encroachment into the countryside. The re-use of

these buildings is unlikely to discourage the recycling of derelict or other urban land. The proposal would not therefore conflict with the purposes of including the land in the Green Belt.

Findings

20. Overall, I consider that the reuse of the existing buildings for a garden centre would preserve the openness of the Green Belt and would not conflict with the purposes of including land within the Green Belt. It would therefore not be inappropriate development in the Green Belt.
21. Consequently, there is no conflict with Policy DM4 of the Epping Forest District Local Plan 2023. The proposal would also be in accordance with the provisions of chapter 13 of the Framework, which are concerned with the protection of Green Belt land.
22. As I have found that the appeal proposal is not inappropriate development in the Green Belt, it is not necessary to consider whether or not very special circumstances exist.

Other Matters

23. The appeal site is adjacent to the Epping Forest Special Area of Conservation (the EFSAC). In brief, this area is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) in order to safeguard the habitats and the ecology they support.
24. Disturbance to the EFSAC from the proposed use would not occur from recreational disturbance but I must also consider whether there would be a change in atmospheric pollution that could affect the integrity of the site. In order to mitigate such adverse effects, the Council has an Interim Air Pollution Mitigation Strategy (IAPMS). This is a tariff-based approach which is proportionate in nature such that only two strategic employment allocations are currently required to make a financial contribution.
25. The existing operations at the appeal site have been taken as a baseline for the modelling that informed the strategic Habitats Regulations Assessment and the IAPMS. The main parties accept that reusing the existing buildings as a garden centre would accord with the modelling that has been undertaken.
26. However, Use Class E comprises a range of uses and a change between these uses would not ordinarily require planning permission. Unchecked, this could result in a change in travel patterns to/from the site and an increase in vehicular movements and thus air pollutants, that in turn could affect the protected site. If these permitted development rights were removed and the use restricted to just a garden centre through a planning condition, this would be a form of mitigation. It would provide a high degree of certainty that the use would not change.
27. Natural England, the statutory conservation body, has confirmed that the Council's approach and the modelling outputs would enable a conclusion of no adverse effect to site integrity. Therefore, as the use of the site as a garden centre would accord with the modelling and having undertaken an Appropriate Assessment, I conclude that the integrity of the EFSAC would be protected.

28. Interested parties have separately raised more general concerns regarding air pollution. In view of my findings above, I am satisfied that in this respect the living conditions of neighbouring occupiers would not be adversely affected by the use of the site as a garden centre.
29. Interested parties also expressed concerns that the proposal could result in an industrial estate being developed on the site. Such a use would be outside the scope of this appeal and thus require a separate planning permission.
30. The site's location, whilst not within a settlement or on the edge of one is nonetheless positioned reasonably close to large centres of population, and so journeys to the site by private motor vehicle would be relatively short. The nature of the use limits the extent to which sustainable transport options would be a realistic alternative to the use of a private motor vehicle. However, the Transport Statement indicates that cycle parking, in line with the required standards, would be provided as part of the proposal. Compliance with the required policies would be neutral within the overall balance.

Conditions

31. The standard time limit would not be applicable in this case but a condition listing the approved plans and documents would be necessary in the interests of certainty.
32. Given my findings in relation to the extent and scale of any reuse of the site within the Green Belt and having regard to the integrity of the EFSAC, conditions restricting the use to that of a garden centre, establishing its hours of operation and the extent of external sales/display areas are all reasonable and necessary.
33. A condition securing the proposed cycle parking would be reasonable and necessary.
34. In recognition of the move away from a lawful horticultural use, the submitted Biodiversity Enhancement report indicates various measures that would be implemented. These were discussed at the Hearing, and it was accepted that conditions securing their implementation would be reasonable.

Conclusion

35. I have found above that the proposal accords with the development plan, and there are no material considerations which indicate that a decision be taken other than in accordance with it. The appeal should therefore be allowed, and planning permission granted.

Stewart Glassar

INSPECTOR

HEARING APPEARANCES:

FOR THE APPELLANT:

Stuart Mills - Associate Director, Icen Projects

FOR THE COUNCIL:

Sukhi Dhadwar - Principal Planning Officer

Schedule of Conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following drawing numbers and documents:
Site Location Plan – 200 Rev P2
Existing Block Plan – 201 Rev P4
Existing Layout and Footprint Analysis – 202 Rev P3
Existing Layout and Footprint Analysis – 203 Rev P3
Existing Layout and Footprint Analysis – 204 Rev P3
Existing Layout and Footprint Analysis – 205 Rev P3
Biodiversity Enhancement report by ACJ ecology dated 05 February 2024
Transport Statement by Ardent Consulting Engineers (January 2024 – Report Ref 2305410-R02)
- 2) The site shall be used for a garden centre use and for no other purpose, including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 3) Any outdoor display and/or sales areas shall be limited to the 'Garden Centre Outdoor Sales Area' coloured yellow and shown on drawing 201 Rev P4. No outdoor displays or sales shall be located or take place on any other part or area of the site.
- 4) The use hereby permitted shall only take place between the following hours: 0800 - 1900 Mondays – Saturdays; 0900 - 1700 Sundays and on Bank or Public holidays.
- 5) Deliveries shall be taken at or despatched from the site only between 0800 - 1900 on Mondays - Saturdays and not at any time on Sundays or on Bank or Public Holidays.
- 6) Within 6 months of the date of this decision bicycles parking in accordance with the Transport Statement by Ardent Consulting Engineers (January 2024 – Report Ref 2305410-R02) shall be fully implemented and shall thereafter be kept available for the parking of bicycles.
- 7) Within 6 months of the date of this decision the Biodiversity Enhancement Strategy set out in the Biodiversity Enhancement report by ACJ ecology dated 05 February 2024 shall be fully implemented and shall thereafter be retained and maintained.

END