



Appeal Decision

Site visit made on 14 November 2017

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8th December 2017

Appeal Ref: APP/W1905/W/17/3177337

Halstead Hill Nursery, Halstead Hill, Goffs Oak EN7 5NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Tony Sawyer against the decision of Broxbourne Borough Council.
 - The application Ref 07/16/1199/O, dated 10 October 2016, was refused by notice dated 20 December 2016.
 - The development proposed is "outline application for 14no Dwellings as Self-Build Plots".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline, with access to be considered at this stage. A site layout plan for the development and photographic images of the dwellings have been considered as illustrative.

Applications for costs

3. Applications for costs were made by Mr Tony Sawyer against Broxbourne Borough Council and by the Council against Mr Tony Sawyer. These applications are subject to separate decisions.

Main Issues

4. The site is within the Green Belt and so the main issues are:
 - Whether the proposal would be inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and the development plan;
 - The openness of the Green Belt;
 - The character and appearance of the area;
 - Highway safety; and
 - If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Planning policy background

5. The Development plan comprises the Broxbourne Local Plan (LP) Second Review 2005. The emerging Broxbourne Local Plan (LP) 2016-2031 was scheduled for Regulation 19 Pre-submission consultation in November 2017. Submission for examination by the Inspectorate is expected to be in March 2018 and an examination hearing is scheduled in August 2018. The plan remains at an early stage of plan preparation but it has moved on from an initial Regulation 18 Draft Local Plan consultation carried out between July and September 2016. As such, small weight is attached to the plan.
6. The Council does not have a five year housing supply of deliverable housing land. As such, the Council's housing supply policies should not be considered up-to-date. The mechanism for applying the presumption in favour of sustainable development is set out in paragraph 14 of the Framework. Under the fourth bullet point, where relevant policies are out-of-date, permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (the tilted test) or specific policies in the Framework indicate development should be restricted.
7. Footnote 9 of the Framework indicates that 'specific policies in the Framework' include Green Belt policy. In such a scenario, the tilted test under paragraph 14 only applies if the proposal has been found to be policy compliant with restrictive Green Belt policies. My attention has been drawn to *Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG* and *Richborough Estates & SSCLG v Cheshire East BC* [2016] EWCA Civ 168. In the absence of the five year supply of deliverable housing land, Policy GBC2 of the Broxbourne Local Plan Second Review (LP) 2005 would be out-of-date. However, this judgement does not change the way that the proposal should be assessed under specific Green Belt policy first and only if compliant, under the tilted test.

Whether inappropriate development

8. The Framework establishes that new buildings or development are inappropriate unless they fall within the exceptions listed in paragraphs 89 or 90. One such exception is the limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), which would not have a greater impact on the openness of the Green Belt and does not conflict with the purposes of including land within it.
9. The Appellant has indicated that the site is previously developed. There is a small brick built building, limited remnants of walls and hard surfacing on the site, but most of the site is now dominated by grassland, scrub vegetation and trees, and mostly green field in nature. Notwithstanding this, Annex 2: Glossary of the Framework indicates that the definition of a previously developed land, excludes land that has been occupied by agricultural buildings. From the planning history of the site, it is clear that the site was formerly in agricultural use, being used for horticultural purposes. In *Dartford BC v SSCLG* [2017] EWCA Civ 141, residential gardens not in 'built-up areas' are not excluded from the general definition of previously developed land but this is not relevant here with a previous agricultural use on the site.

10. On all accounts, the site is excluded from the Framework's previously developed site definition. For these reasons, the appeal site would not fall within this exception listed at paragraph 89 of the Framework. I am not aware of any other exceptions relevant to the consideration of inappropriate development and nor has any been brought to my attention.
11. Policy GBC2 of the LP 2005 sets out the need to preserve the openness of the Green Belt and reflects some of the exception criteria listed within the Framework. The proposal would be inappropriate development in not meeting the policy's requirements on exceptions. Taking into account some inconsistency of the policy with the Framework and the absence of five year supply of housing land, moderate weight is attached to this policy conflict.
12. The emerging LP policy GB2 provides that subject to criteria being met, the redevelopment of former nursery sites may, in principle be acceptable in Green Belts. However, it does require development to enhance the rural character of the countryside within which it is set, which I will consider under character and appearance.

Openness of the Green Belt

13. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness is commonly taken to be the absence of built or otherwise urbanising form.
14. My attention has been drawn to an extant 1949 planning permission for glass houses on the site which if completed would be greater in volume than the proposed houses, even after taking into account the outline nature of the planning application. However, the Appellant has stated that the site is incapable of supporting a viable business. In light of this, there is not a greater than theoretical possibility that the glasshouse development would take place. Therefore, the proposal has been considered on the basis of the limited extent of building on the site. On this basis, the proposed housing would be considerably greater than the existing built volume on the site.
15. In a future reserved matter application, dwellings could be sited differently from that shown on the illustrative plan and additional landscaping could take place. However, it is difficult to envisage how a scheme of 14 dwellings could be devised without any harm to openness simply because there is little built form on the site. For all these reasons, there would be a significant loss of openness of the Green Belt, which is an essential characteristic of Green Belts.

Character and appearance

16. The appeal site is enclosed by the Halstead Hill frontage, derelict glasshouses and industrial buildings to the north (Kobe Nursery) and a recent residential cul-de-sac development of dwellings to the south. Apart from this recent residential development, dwellings mostly front onto Halstead Hill frontage. The pattern and type of development results in an attractive semi-rural character and appearance along the road. Behind the frontage, the appeal site and a wildlife site within the control of the Appellant and Hollows Leys Nursery are dominated by scrubland, grassland, hedgerow and trees giving rise to a more rural character and appearance.
17. The indicative layout shows the dwellings distributed around an internal access road which would extend residential development considerably behind the road

frontage. Such a suburban style pattern and type of layout would be markedly at odds with the identified character and appearance of the area. The adjacent recent housing development does extend and spreads across a similar sized site. However it does not sit comfortably with the character and appearance of the area and demonstrates the adverse impact that the proposal, as shown on the illustrative plan, would have. There could be other ways to develop the site but the frontage part of the site is considerably narrower than the rear part of the site. Therefore, it is difficult to see how the site could be developed for 14 dwellings without housing extending to the rear harming the character and appearance of the area.

18. Additionally, there would be a loss of a verge and possibly cutting back and loss of trees and vegetation to accommodate a footway along the frontage to the site. Although the trees and vegetation individually are of no great significance, the cumulative impact of such works, including the highway footway, would result in an adverse impact on the lane's semi-rural character.
19. A submitted design code could be of benefit in demonstrating that the design of individual self-build dwellings and plots do not appear markedly at odds with themselves, the site and the surroundings. However, there is little detail on the design of dwellings and plots, such as materials, features and styles, and associated rationale. The code is made vague by cross-referencing to Council policy documents.
20. For all these reasons, the development would harm the character and appearance of the area. Accordingly, the proposal would be conflict with policies H8, HD13, HD14 and HD17 of the LP, which collectively and amongst other matters, requires new development to be of a high quality of design, maintain and, where possible, enhance, the existing character and landscape of an area, and reflect and relate to local distinctiveness and context. Similarly, the proposal would be contrary to emerging LP policy GB2 in that the rural character of the countryside would not be enhanced, albeit only small weight is given to this policy conflict.

Highway safety

21. The proposed frontage footway along Halstead Hill road frontage, could take place within highway land/land within the site. However, there are practical implications, in terms of topography, ditches and carriageway narrowing. On this basis, the Highway Authority has concerns as to whether this would be feasible. Based on what I saw on my site visit, I concur with such a view and therefore, it has not been demonstrated that this footway would be safe in highway terms.
22. There are alternative proposals to make improvements to an existing footpath connecting up Kobe Nursery site with the appeal site and the nearby settlement, and an internal connection into a pedestrian network into Barrow Lane through a wildlife site controlled by the Appellant. Another proposal is to extend the footway built for the adjacent site around the corner of Halstead Hill. However, it is unclear whether these proposals could be delivered or negate a need for the footway along the frontage of the site. Taking the precautionary principle, the proposal would conflict with policy T3 of the LP, which requires, amongst other matters, that new development does not compromise the safety of road user and pedestrians.

Other considerations

23. There is need for additional housing in the borough and a demand for self-build plots. The Council's own policy documents show provision of 2.1 years of housing supply. (Annual Monitoring Report 2016). As indicated by the Appellant, the figure would be lower than this with a 20% contingency buffer. The Council's latest figures indicate some 100 people are enrolled on the self-build register. The Appellant has provided market evidence in accordance with Planning Practice Guidance policy to indicate further market demand and indicated planning permissions have not been granted for this type of development.
24. Paragraph 50 of the Framework requires Councils to plan for people wishing to build their own homes to achieve delivery of a wide choice of high quality homes, widening opportunities for home ownership and creating sustainable, inclusive and mixed communities. Legislation places a duty to grant planning permission in respect of enough serviced plots of land to meet the demand for self-build and custom house building. The contribution to housing need and self-build housing would carry substantial weight in favour of the scheme.
25. The Government's white paper entitled "Fixing our broken housing market" sets out how the Government intends to boost housing supply and over the long term create a more efficient housing market. It promotes bringing back into beneficial use as much as possible of previously developed land but it indicates Green Belt boundaries should be amended only in exceptional circumstances where local authorities can demonstrate that they have fully examined all other reasonable options for meeting their identified housing requirements. Furthermore, the White Paper is a consultation document with the majority of proposals subject to further consultation significantly limiting its weight in terms of policy.
26. My attention has been brought to other sites but they merely illustrate that every site should be considered on its own particular planning merits. Despite my concerns on the area's character and appearance, the adjacent housing site was permitted on the basis of being previously developed land and contained several structures providing a significant volume of existing build form on the site. At Hope Nursery, the Council has entered into discussions about a potential self-build scheme project but based on the correspondence, the site is extensively covered with buildings.
27. At Small Acre Nursery and Oak View Farm, the full reasons for the resolution to grant planning permission have not been provided so I cannot make a full comparison with this site. Nevertheless, some affordable housing was to be provided and the scheme was not for self-build and so there are differences with the appeal scheme. At Benhams Farm in Burghfield Common in Reading, an appeal was allowed for self-build development but this site is not within the Green Belt and within a settlement boundary so distinguishing it from the current proposal.
28. Support for the redevelopment of the site is cited from policy documents, including the Goffs Oak Area Development Options 2016. Meetings have taken place between the Appellant and the Council regarding the redevelopment of the appeal site which would link in with neighbouring nursery sites. A masterplan was produced showing linkages and layout with these neighbouring nursery sites, and the Appellant offered a wildlife site for

amenity purposes as part of this. However, these documents and meetings were background documents and work for the emerging LP and were not adopted development plan planning policy. Such discussions and documents do not change the status of Framework as national policy on the Green Belt. None of the correspondence between the Council and the Appellant suggests favour with a further planning application for the site. Furthermore, the wildlife site is not part of the current proposal in the absence of it being included within the red-edge boundary of the submitted location plan or any legal agreement.

29. The appeal site is approximately 1km from a local centre at Cromwell Avenue in Chesthunt, 2km from Chesthunt Town Centre and about 1.5km from Goffs Oak Village Area. The proposal includes the provision of a footway along Halstead Hill joining up with the footway being constructed linking up with the development on the neighbouring residential site, and other footway options. However, services and facilities are not close by given the distances involved which would and there are issues with feasibility and deliverability of the footways. Thus, the development would not allow good accessibility to services and facilities for everyday needs by non-private car means.
30. My attention has been drawn to an extant planning permission on the site but for the reasons indicated, only limited weight can be attached to it as a fall-back position because use of the site for horticulture is not viable. There has been a dismissed appeal for 14 self-build dwellings on the site in March 2017. Although my conclusions are similar, the appeal proposal has been considered on its particular planning merits.

Conclusion

31. The proposal would be inappropriate development in the Green Belt which is by definition harmful. There would also be a loss in openness of the Green Belt. The Framework establishes substantial weight should be given to any harm to the Green Belt.
32. There would also harm to the character and appearance of the area, and highway safety. Significant weight is attached to the contribution of the proposal to housing supply and self-build demand. However, there is no substantive evidence that there are more suitable, policy compliant sites for self-build units. It is also the position of the Government within Planning Policy Guidance that unmet housing need is unlikely to clearly outweigh the harm to the Green Belt and other harm to establish the 'very special circumstances' justifying inappropriate development in the Green Belt.
33. Accordingly, 'Very special circumstances' do not exist as the potential harm to the Green Belt by reason of inappropriateness, and other harm, is not clearly outweighed by other considerations. In terms of the development plan, the proposal would conflict with Policies GBC2, H8, HD13, HD14, HD17 and T3 of the LP. The proposal would conflict with national policy on Green Belts. There would be conflict with policy GB2 of the emerging LP. Notwithstanding the reduced weight to some of these policy conflicts, the appeal should be dismissed for all these reasons.
34. The Appellant has not submitted an obligation to secure various infrastructure contributions, including affordable housing. Having assessed the Council's and Hertfordshire County Council's contribution justification, I am satisfied that

the statutory tests of Regulation 122(2) and pooling requirements of Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) would be met. Had this appeal turned on this matter, further clarification on the promised obligation would have been requested. As there are substantive reasons to dismiss the appeal, there is no reason to do so.

35. For the reasons given above and having regard to all other matters raised, including support, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR

Richborough Estates