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## Appeal Decision

Site visit made on 30 September 2014

**by Terry G Phillimore MA MCD MRTPI**

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

**Decision date: 28 October 2014**

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**Appeal Ref: APP/R3650/A/14/2218695**

**Land at Smithbrook Kilns, Cranleigh, Surrey GU6 8JJ**

- 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 Smithbrook Kilns against the decision of Waverley Borough Council.
  - The application Ref WA/2013/1303, dated 28 June 2013, was refused by notice dated 8 November 2013.
  - The development proposed is erection of 25 dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appeal relates to an outline application with all matters of detail reserved for later approval other than means of access and layout.
3. As part of the appeal the appellant seeks to amend the proposal by a reduction in the number of dwellings to 20, with a subsequent revision to the layout and change in the ratio of on-site parking provision. This revised proposal would be for a lesser development, with no change in its fundamental nature. I consider that the appeal can deal with the proposal on this amended basis with no material prejudice to the interests of other parties arising as a result. I therefore proceed in that way.
4. The parties were invited to comment on the judgment of the High Court in the case of Redhill Aerodrome Limited vs Secretary of State for Communities and Local Government, Tandridge District Council and Reigate and Banstead Borough Council [2014] EWHC 2476 (Admin) as relevant to their cases. A response was subsequently received from the appellant. However, on 9 October 2014 the judgment was overturned by the Court of Appeal ([2014] EWCA Civ 612). The comments made on the case are therefore no longer material to the decision.

### Main Issues

5. The main issues are:
  - a) whether the proposal amounts to inappropriate development in the Green Belt and the effect it would have on the Green Belt;

- b) the effect the development would have on the character and appearance of the area;
- c) the effect the development would have on the supply of employment land in the Borough;
- d) the effect the development would have on housing supply in the Borough including affordable housing;
- e) whether contamination of the site has been satisfactorily addressed;
- f) whether biodiversity interests would be safeguarded;
- g) whether the development would create satisfactory living conditions for future residents;
- h) whether the development would give rise to infrastructure needs that should be addressed;
- i) the effect the development would have on highways conditions;
- j) in the event that the proposal is found to be inappropriate development, whether the harm to the Green Belt 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 such inappropriate development.

## **Reasons**

### ***Green Belt***

6. The wider site of Smithbrook Kilns, which lies in an area designated as Green Belt, is served by an access off the eastern side of the A281 Horsham Road. There are existing buildings in the south-west corner of this site, in use for a variety of business purposes. The appeal site, of some 0.65ha, takes in the access and an area of land to the north of this. It currently comprises an area of car parking and open scrub.
7. According to the National Planning Policy Framework, the construction of new buildings should be regarded as inappropriate in Green Belt other than certain specified exceptions. These do not include the construction of new housing of the type proposed on the site.
8. The appellant relies on the exception of "limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt land and the purpose of including land within it than the existing development". In this context extensive material has been submitted relating to the planning history of the site, aiming to demonstrate that the site forms part of a larger unit of previously developed land on which permission for development has been implemented.
9. According to the NPPF, the essential characteristics of Green Belts are their openness and their permanence. The appeal site as it exists at present accommodates no buildings or structures, and has a distinctly open character. The proposal would involve the construction of blocks of two storey buildings

across much of the site, together with the introduction of residential curtilage boundary features. It would substantially erode the openness of the site and of the Green Belt. Therefore, even were the previously developed criterion to apply to the site based on its planning status, the proposal does not fall within the exception due to the considerably greater impact on openness that the proposal would have than the existing development on the site. In this respect the site is of such size and character as it currently exists to in itself contribute materially to Green Belt openness.

10. The appellant places particular emphasis on permission ref WA/2003/2099 granted in 2004. This approved 3,086sqm of industrial and commercial floorspace in three buildings as an addition to 1,675sqm previously permitted in 1997. There is no dispute that implementation of the permission was commenced as a result of ground works taking place. The appellant refers to the approved layout for this development on the site, drawing a comparison with the current proposal which is for less floorspace. It is argued that the approval demonstrates an acceptance that such development would not adversely affect openness. However, I need to assess the impact of the current proposal for residential development on its own merits in this respect. As set out above, the adverse effect on openness would be substantial. I deal with the approved scheme as a fallback position below as part of the consideration of whether very special circumstances exist.
11. The proposal is therefore inappropriate development in the Green Belt. In addition to harm by definition, it would give rise to considerable harm to the Green Belt by way of reduction of openness. It conflicts with policy C1 of the Waverley Borough Local Plan 2002, which seeks to prevent inappropriate development in Green Belt and a material detraction from openness.

### ***Character and appearance***

12. Policy D1, among other things, seeks to prevent material detriment to the environment by virtue of harm to the visual character and distinctiveness of a locality, particularly in respect of the design and scale of the development and its relationship to its surroundings. Policy D4 seeks to ensure that development is of a high quality design which integrates well with the site and complements its surroundings. Among other things, it should be appropriate to the site in terms of scale, height, form and appearance; and be of a design and materials which respect the local distinctiveness of the area or which will otherwise make a positive contribution to the appearance of the area.
13. The site lies within an Area of Great Landscape Value where policy C3 applies. Under this, strong protection will be given to ensure the conservation and enhancement of the landscape character.
14. The site is fairly well screened from Horsham Road by an established tree belt and changes in levels, and trees and vegetation lie along the northern boundary. The immediate context for the proposal is provided by the two storey commercial buildings to the south. However, the wider area within the AGLV is of a rural nature with dispersed residential properties as part of sporadic development along the A281. The proposed two storey residential blocks would reflect the scale and height of the commercial buildings, but the short residential terraces with enclosed gardens would create an urban feel. This would be in contrast with both the more open landscape settings of the commercial development and the wider rural landscape. Despite the degree of

screening and the existing use and condition of the site, the proposal as indicated by the layout would not reinforce local distinctiveness or achieve a good integration with the surroundings. This would result in a harmful impact on the character and appearance of the area and conflict with the above policy requirements.

### **Employment land**

15. Under policy IC2 the loss of suitably located industrial and commercial land will be resisted. Policy IC10 states that Smithbrook Kilns has been identified as such an area, and is subject to policy IC2. According to policy IC2, in giving consideration to applications which conflict with the policy a demonstration that there is no need for the site to be retained for employment purposes will be required. The current proposal would involve the loss of the site from potential employment use.
16. The supporting justification for policy IC10 states that as there continue to be limited opportunities for small businesses in the Borough it is important to retain the site for industrial and commercial purposes and in particular for small businesses.
17. Paragraph 22 of the NPPF advises that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Paragraphs 160 and 161 require a clear understanding of business needs, and assessment of the needs for land or floorspace for economic development.
18. The Council refers to its employment land review update of 2011. This identified a clear need for additional employment land in the Borough. In this respect the policy can be regarded as up to date and consistent with the NPPF.
19. The appellant has submitted a valuation report on implementation of the approved development. This concludes that this would not be viable, producing a substantial negative profitability. The finding is not challenged, but the Council argues that it does not amount to a demonstration of no reasonable prospect of the site being used for that purpose. It contends that a testing of this requires a marketing of the site for an employment use in order to take account of market signals, which has not been done.
20. I consider that there is some substance to the Council's argument. However, policy IC10 is fairly prescriptive on the type of development that would be acceptable on the site. It limits this to small-scale industrial and commercial uses with specific criteria to be met. On this basis the evidence submitted is a strong indicator of the likely viability of an acceptable employment development. The site has also been unused for a long period. While not entirely conclusive, the evidence suggests that, although there is some conflict with policies IC2 and IC10, the loss of the site from employment use would have limited harmful effect on the supply of employment land in the Borough.

### **Housing supply**

21. The Council advises that it does not currently have a five year supply of housing land, as required by the NPPF. It also acknowledges that the proposal would deliver much needed housing within the Borough. That provision

towards unmet housing need carries some weight in favour of the development.

22. There is no development plan policy applicable to the site which requires the provision of affordable housing. Nevertheless the Council has pointed to clear evidence of a substantial unmet need for affordable housing in the Borough. The proposal is intended to provide housing for private renting. The appellant has submitted some data on costs and income for the scheme to demonstrate that the costs of providing an affordable element could not be borne, on the basis that the development would need to be subsidised for a considerable time by other income. The appellant goes on to suggest that there could be a safeguard by way of a planning obligation such that, were there a need to sell the houses for any reason within 7 years, the issue of affordable housing could be reassessed and a contribution towards affordable housing then made. However, there is no such obligation before me. While there is no conflict with the development plan on this matter, the proposal would not secure any benefit in terms of provision of needed affordable housing to weigh in the balance.

### ***Contamination***

23. Contamination of the site arising from its previous use is a matter of concern with respect to the proposed residential development. Subsequent to the refusal the appellant has provided site assessment information including a proposed remediation scheme. Based on consideration of this by the Council's environmental health officer, the Council is now satisfied that, with a suitable condition, the site could be made acceptable for the development in this respect, overcoming the relevant ground for refusal. There is no evidence that leads me to a different view, and the requirements of policies D1 and D2 on this matter are met.

### ***Biodiversity***

24. Similarly, further information based on ecological surveys of the site has been provided with the appeal. The Council now considers that there would be no adverse effect on biodiversity value, overcoming its refusal on this matter. I am satisfied that adequate information is available with regard to potential impact on biodiversity, and that with appropriate conditions and statutory protection there would be no conflict with policy D5 by reason of harmful impact in this respect.

### ***Future living conditions***

25. The layout of the proposed development as revised would appear to provide scope for distances of at least 21m between dwelling windows and 18m between windows and neighbouring amenity space. As such, and having regard to the advice in the Council's Residential Extensions Supplementary Planning Document 2010, the scheme would provide scope to achieve acceptable living conditions for future occupiers in terms of overlooking and privacy. There would be no breach of policies D1 and D4 on these matters.

### ***Infrastructure***

26. Policy D13 seeks adequate infrastructure provision to address the impact of development, with policy D14 providing further advice on planning obligations. The Council's Supplementary Planning Document of 2008 on Infrastructure

Contributions sets out a requirement for these where there would be a net increase in dwellings.

27. The Council has set out a list of contributions sought totalling £206,346.25 relating to a proposal for 25 dwellings. These cover education, libraries, playing pitches and other play and leisure facilities, community facilities, recycling, environmental improvements and transport. Information has been provided on the basis for calculating the sums, the unmet needs that could be expected to arise from the development, and how the sums would be spent to benefit the future occupiers and address these needs.
28. No contributions towards such matters are put forward with the proposal. The appellant relies on the same information on costs and income as referred to above with respect to affordable housing to justify this, with the same suggested safeguard proposal. Again there is no obligation before me. The NPPF emphasises the importance of ensuring the deliverability of development, but the Council raises concern that the information provided falls short of a financial viability appraisal to justify an absence of contributions. Even based on a position of accepting that the proposal would not be deliverable were contributions to be made, the Council's evidence establishes that without any such provision the proposal would lead to significant unmet infrastructure needs arising from its occupation. These unmet needs, and resultant additional pressure on local facilities and services, amount to a harmful impact of the proposal.

### **Highways**

29. The Council's Parking Guidelines of October 2013 require, outside town centre locations, 2 parking spaces for a 2-bed dwelling and 2.5 spaces for 3-bed units. The revised proposal could comply with these standards, meeting the requirement of policy M14.
30. The Council has raised no objection to the proposal on grounds of traffic or safety impact, and having regard to the assessment of the highway authority and the scope for appropriate conditions on access matters there is no evidence to support a different conclusion. Taking into account local bus services, the highway authority is also satisfied that the location offers reasonable scope to travel to local centres by modes other than the private car. No conflict with policy M2 arises on these matters.

### **Very special circumstances**

31. The proposal would result in inappropriate development in the Green Belt. In addition to harm by definition, it would give rise to considerable harm to the Green Belt by way of reduction of openness.
32. According to the NPPF, inappropriate development should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
33. There would also be a harmful impact on the character and appearance of the area. Some unmet needs for infrastructure would arise, with additional pressure on local facilities and services.

34. The impact in terms of employment land supply would be largely neutral, and requirements with respect to contamination, biodiversity, living conditions and highways could be met without harmful effects.
35. In terms of other considerations, there would be a benefit from the provision of additional housing, although there would be no affordable housing secured to add to the weight of this. With regard to the fallback position of full implementation of the extant permission, based on the agreed position that this is unviable there is no reasonable prospect that this would be undertaken. Indeed the appellant states that if the appeal is unsuccessful the site would remain in its current state. The extant permission therefore carries little weight.
36. Various references have been made to sustainable development, including disagreement on whether the proposal would create an isolated development or help support the existing commercial development on the site by way of a synergy of uses. There is not evidence to establish that the latter amounts to a secure prospect of some wider benefit to which significant weight should be accorded. Furthermore, the footnote to paragraph 14 of the NPPF makes clear that the presumption in favour of sustainable development does not apply to land designated as Green Belt.
37. I have also taken into account the appellant's points regarding the benefits of bringing into use vacant land, the suggested quality of the development, other developments that have been permitted in the area, and the status of the site in the Council's Strategic Housing Land Availability Assessment.
38. The benefits are to be assessed in the context of the importance given in policy terms to Green Belt protection. Overall I find that the other considerations, either individually or on a cumulative basis, do not clearly outweigh the harm to the Green Belt and other harm. Very special circumstances to justify the inappropriate development therefore do not exist.

### **Conclusion**

39. For the reasons given above and taking into account all other matters raised, including the Council's handling of the application, I conclude that the appeal should be dismissed.

*T G Phillimore*

INSPECTOR