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## Appeal Decision

Hearing held on 23 June 2015

Site visit made on 23 June 2015

**by Michael Boniface MSc MRTPI**

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

**Decision date: 14 July 2015**

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**Appeal Ref: APP/Y3615/W/15/3002308**

**North Wyke Farm, Guildford Road, Normandy, Guildford, GU3 2AN**

- 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 Gordon Phillips against the decision of Guildford Borough Council.
  - The application Ref 14/P/00779, dated 17 April 2014, was refused by notice dated 10 October 2014.
  - The development proposed is a residential development to deliver 90 units comprising a mix of 1 & 2 bedroom flats, 2, 3 & 4 bedroom houses and 3 shop units.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application is submitted in outline with all matters reserved for subsequent consideration except access. I have determined the appeal on this basis.
3. Shortly before the Hearing the appellant submitted a Phase II Ecological Survey dated June 2015 which sought to address the concern raised by the Council in its fifth reason for refusal. The Council confirmed during the Hearing that although it had insufficient time to consult upon the document, it was nevertheless satisfied that the report offered sufficient comfort that ecological interests would not be harmed, subject to appropriate mitigation being secured by condition. The report follows an Ecological Appraisal (April 2014) and a Mitigation Strategy and Enhancement of Habitats for Bats, Amphibians and Reptiles Report (January 2015), having carried out additional survey works recommended in the previous reports. I am satisfied that no party is prejudiced by me taking this document into account in reaching my decision.
4. It is common ground between the parties that the site is located in the Green Belt and that the proposed development would constitute inappropriate development for the purposes of the National Planning Policy Framework (the Framework). Paragraph 79 of the Framework makes it clear that the Government attaches great importance to the Green Belt and the protection of its essential characteristics, those being openness and permanence. Paragraph 87 confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In accordance with paragraph 88, I attach substantial weight to the harm that would result to the Green Belt by reason of inappropriateness.

5. Policy RE2 of the Guildford Borough Local Plan (LP) (2003) seeks to restrict development in the Green Belt and was agreed between the parties to be broadly consistent with the Framework. However, as the Framework was published much more recently, I attach this national policy greater weight.
6. It was also accepted by the appellant during the Hearing that the development would harm the openness of the Green Belt. Given the largely undeveloped nature of the site and the scale and nature of the proposed development, it seems to me that the development would have a considerable impact in this respect and I attach substantial weight to this harm.

### **Main Issues**

7. In light of the above, the main issues are:
  - (a) The effect on the character and appearance of the area;
  - (b) Whether significant adverse effects on the Thames Basin Heaths Special Protection Area (SPA) would be avoided;
  - (c) The effect on other ecological interests;
  - (d) The effect on local infrastructure;
  - (e) 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 the development.

### **Reasons**

#### *Character and appearance*

8. The site comprises a substantial dwelling with various outbuildings, many of which were used for stabling horses, which were concentrated in the corner of the site bounded by Guildford Road and Westwood Lane. The remainder of the site is open countryside land which has been subdivided by post and rail or wire fencing for use as paddocks. Hedgerow boundaries and mature trees provide a rural and verdant character.
9. Normandy is a small and very dispersed settlement which is distinctly linear in its form, following the line of the highway with little development at depth. This maintains a rural appearance with good amounts of open space along with views between buildings towards gardens and greenery. An exception to this is a relatively modern development to the south of the site, known as Walden Cottages. This group of houses stands remote from development on Guildford Road, separated by the open space currently provided by the site. It involves development at depth off Westwood Lane and the appellant advised that the proposed development would reflect this from of development.
10. It seems to me, however, that this group of buildings is itself an anomaly in the rural landscape that fails to reflect the otherwise linear form of the settlement. The proposed development would compound this visual anomaly, significantly increasing its visual impact and further eroding the linear character of the settlement. Furthermore, its scale and form, including some three storey development, would introduce a suburban appearance at odds with the rural settlement and this would be manifested in a much more dense form of development, even compared to the Walden Cottages development. The appellant suggested during the Hearing that this greater density reflected modern requirements for smaller gardens and the fact that flatted

developments were also incorporated into the proposals. However, this does not alter the visual harm that would arise through failure to reflect the rural and spacious character of the settlement.

11. The submitted 'Design and Access and Sustainability Statement' (April 2014) explains that the development would reflect the character of the area by careful layout incorporating large amounts of open space, retaining trees and hedgerow planting and by creating a sense of place through varied density and design features that would pick up on local architecture. I acknowledge that the detailed layout and appearance of the development remain reserved matters at this stage but the indicative layout and other information provided do not, in my view, demonstrate that the site could satisfactorily accommodate the scale of development proposed without harm to the character of the area.
12. Although the Council identified part of the site as potential development land in its Strategic Housing Land Availability Assessment (SHLAA) in 2012 and its Green Belt and Countryside Study (2012), it has not been progressed as part of the emerging Local Plan process, which the Council explained, now seeks a different spatial distribution for housing.
13. Although the, now dated SHLAA, did not identify any constraints to development of the site in terms of character and appearance I am mindful that this is a broad brush process and does not preclude more thorough consideration through the planning application process. Furthermore, the absence of any allocation in later iterations of the SHLAA or the emerging Local Plan indicates a change in approach by the Council which is consistent with the Council's case in this appeal. Notwithstanding that I attach very little weight to the emerging Local Plan given its early stage of preparation, I similarly attach little weight to the historic SHLAA and Green Belt and Countryside Study for these reasons. This is particularly so in light of my own conclusion on this matter as set out above.
14. The development would harm the character and appearance of the area. As such, it would be in conflict with Policies G5(1) and G5(2) of the LP which require that development respect local context including established street patterns, along with the scale, height and proportions of the surroundings; and the requirement for good design contained within the Framework. I attach significant weight to this harm.

#### *Thames Basin Heaths SPA*

15. The appeal site is located within a buffer of 400m to 5km from the Thames Basin Heaths SPA. The Habitats Regulations<sup>1</sup> require that proposed developments do not adversely impact on the integrity of the SPA, which in this case seeks to protect a number of important bird populations and habitats. The development has the potential to increase harmful recreational visits to the SPA and the proposed development generates a requirement for a financial contribution in accordance with the Council's Avoidance Strategy (AS) 2009-2014. This sets out a strategy to avoid any significant effects, including in combination effects, arising from residential development.
16. The AS explains how financial contributions are calculated and how the money will be spent in mitigating potential adverse impacts through the provision of

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<sup>1</sup> Conservation of Habitats and Species Regulations 2010

Suitable Alternative Natural Green Space (SANG) and access management measures and monitoring. Both parties agree that a financial contribution is necessary in these regards in accordance with the AS and Policies NE1 and NE4 of the LP, which restrict development that would adversely impact on ecology. Furthermore, it is agreed that such a contribution would avoid significant adverse effects on the SPA.

17. However, the Council confirmed that no SANG was currently available within a 5km radius to mitigate the potential effects of the development and no provision is proposed as part of the application. It was explained that it was a priority for the Council to identify further SANG and that it was in discussions with Natural England regarding a potentially suitable site referred to as 'Wood Street'. Whilst this offers some comfort that there is a prospect of securing further SANG land in the foreseeable future, it is far from certain at this stage.
18. With this in mind, the Council suggests that a Grampian style condition could be used to prevent any development from taking place until such time as SANG becomes available. I note that this approach is consistent with that taken in two recent appeals<sup>2</sup> in the Borough and I am satisfied that this would prevent harmful development without the necessary harm avoidance measures.
19. The appellant produced a draft Planning Obligation at the Hearing which seeks to provide the necessary contributions of £376,077.57 and 17,562.36 for SANG and Access Management respectively. However, the draft agreement was not completed and was not signed by the Council or the Mortgagor. Under these circumstances its obligations would not take effect and I can attach it no weight. As such, the development would be likely to result in significant adverse effects on the SPA and no mitigation or avoidance measures are proposed. The development would conflict with Policies NE1 and NE4 of the LP, the AS and Part 11 of the Framework. I attach significant weight to the harm that would arise in this respect.

#### *Other ecological interests*

20. The Phase II Ecological Survey (June 2015) identifies a single bat roost within the site, the presence of slow worms and common species of nesting birds, all of which are protected by law. However, overall the site is considered to be of low conservation value having been grazed heavily by horses. The report contains a range of mitigation and enhancement measures which, the Council agreed during the Hearing, would be sufficient to mitigate the harm arising from the development. I have no reason to disagree and note that the proposed enhancement measures would improve habitat value within the site. Subject to the proposed recommendations being secured by condition, the development would not harm ecological interests within the site and I find no conflict with Policy NE4 of the LP or the provisions of the Framework. I attach significant weight to the benefits that would arise in this respect.

#### *Local infrastructure*

21. Policy G6 of the LP requires that planning obligations be secured where a need is generated by a development, whilst Policy H11 sets out a requirement for affordable housing. The Council's Planning Obligations Supplementary Planning

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<sup>2</sup> APP/Y3615/A/13/2200458 and APP/Y3615/A/13/2198634

Document (SPD) (Adopted in 2011 and updated in 2012) provides further guidance in these regards.

22. It is agreed between the parties that 35% of the proposed dwellings should be secured as affordable housing in line with an identified local need and the appellant has indicated a willingness to make such provision in the draft Planning Obligation document. However, given that the Obligation is not completed, the provision cannot be secured and the development would not contribute towards the identified need.
23. In addition to the financial contributions required to avoid adverse impacts on the SPA, the Council is seeking contributions towards local education and open space. It is agreed between the parties that the proposed contributions accord with the Council's policies and the amounts have been derived from standard formula. However, it was conceded by the Council that these contributions would constitute pooled contributions for the purposes of Regulation 123 of the Community Infrastructure Levy Regulations 2010 and limited information was available as to whether the 5 obligation limit had already been reached. On this basis, I am unable to establish whether the contributions could lawfully be taken into account.
24. In any case, little evidence has been provided by the Council with regard to capacity at existing schools or open spaces and no specific projects were identified for expenditure of the proposed contributions. Although I am mindful of the sites rural location and the scale of the proposed development, in the absence of any firm evidence I am unable to conclude that the contributions accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

#### *Other considerations*

25. The Council accepts that it is currently unable to demonstrate a deliverable five year supply of housing land in accordance with paragraph 47 of the Framework, suggesting that it currently has 2.4 years supply. The appellant refers to the *Hunston Properties Ltd v SSCLG [2013] EWCA Civ. 1610* case heard in the Court of Appeal which establishes that Council's should meet the full objectively assessed housing need for the area. On this basis, it is suggested that the Council's supply would in fact be somewhat lower. In any case, it is clear that there exists a considerable deficit in the required amount of housing land and that is at odds with the Framework's objective to boost significantly the supply of housing.
26. Planning Practice Guidance (PPG) advises that need alone is unlikely to outweigh harm to the Green Belt such as to amount to very special circumstances justifying inappropriate development in the Green Belt<sup>3</sup>. Whilst this is so, it is nonetheless a matter which is capable of weighing in favour of development and, therefore, to be considered in the overall balancing exercise. Given the considerable undersupply of deliverable housing land in the Borough, the identified need for both market and affordable housing and the lack of a clear plan on the Council's part to deliver the required housing, I consider that the development would make a valuable contribution that attracts significant weight.

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<sup>3</sup> Reference ID: 3-034-20141006

27. The Council accepts that it is likely to require the use of countryside and Green Belt land in order to meet the full objectively assessed housing need in the Borough. It explained that the emerging Local Plan may involve realignment of the Green Belt boundaries for this purpose but that no changes were expected in the vicinity of the appeal site.
28. Paragraph 83 of the Framework advises that Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. However, during the Hearing the appellant introduced the Court of Appeal judgement, *Luton Borough Council v Central Bedfordshire Council [2015] EWCA Civ.537* which makes it clear that there is no requirement for the Green Belt boundaries to be changed prior to development being permitted in such an area.
29. Part 9 of the Framework clearly sets out the considerations relevant to development in the Green Belt and the need to balance the benefits of a scheme against the harm. If allowed, the development would not have the effect of altering the Green Belt boundaries, it would simply permit development in the Green Belt. Whilst I recognise that there may be a need to utilise land which currently exists within the Green Belt in order to meet housing needs, I do not consider that this adds any particular weight to the case before me, which must be considered in line with Part 9 of the Framework.
30. The development would provide 3 retail units which the appellant suggests would be a benefit to the local community. I have had regard to the Report of Housing Needs Survey (October 2010) produced by Normandy Parish Council and a subsequent letter from the Parish Council in response to an emerging Local Plan consultation, both of which suggest a desire for local shops. However, the former document only received a 28% response rate and this cannot, in my view, be considered representative of the views of the village or a reliable evidence base.
31. I heard that there has been no approach to potential retailers that might occupy the stores and that whilst one of the units is to be offered as a community run facility, no community group had been identified. Furthermore, the Parish Council object to the application and there is no indication that it would be willing to make use of the unit. A local resident explained that the number of services and facilities in Normandy had gradually declined over the years and that attempts by the Parish Council to encourage retailers to the area had proved unsuccessful. In the absence of any evidence to suggest a genuine need or interest in local facilities, I attach only limited weight to any community benefit that might arise from the provision of retail units.
32. The appellant suggests that the provision of infrastructure would be a further benefit of the development, specifically a pedestrian crossing and improvement to bus stops on Guildford Road. The draft S106 agreement does not include any provisions in these regards but it would be possible to secure these improvements by way of condition if planning permission were to be granted. I attach only limited weight to the benefits that would arise as these items of infrastructure are largely required to mitigate the impacts of the development but I recognise that some wider public benefit would be likely to result. I also recognise that footpaths would be provided throughout the site and that potential for on-street parking in the vicinity of a school would be created.

## **Conclusion**

33. The proposed scheme would be inappropriate development in the Green Belt as defined by the Framework and would by definition be harmful to the Green Belt, a matter to which I attach substantial weight. In addition, the development would harm the openness of the Green Belt; the character and appearance of the rural settlement; the integrity of the SPA; and fail to provide affordable housing. I have considered the grounds presented in support of the development but together they do not outweigh the harm the scheme would cause. Consequently, the very special circumstances necessary to justify the development have not been demonstrated. As such, I conclude that the appeal should be dismissed.

*Michael Boniface*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### FOR THE APPELLANT:

Ashley Bowes	Barrister
Mark Brett-Warburton	Agent
Tom Gardner	Student

### FOR THE LOCAL PLANNING AUTHORITY:

Heather Sandall	Principal Policy Officer
Laura Howard	Principal Policy Officer
Lisa Botha	Senior Planning Officer
Carolyn Forster	Solicitor

### INTERESTED PERSONS:

David Bilbe	Local Councillor
Nick Norton	Local Resident

## **DOCUMENTS**

Document 1	Case of Luton Borough Council v Central Bedfordshire Council [2014] EWHC 4325 (Admin)
Document 2	Case of Luton Borough Council v Central Bedfordshire Council [2015] EWCA Civ.537
Document 3	Outline Closing Submissions for the Appellant
Document 4	Draft S106 agreement