



Appeal Decision

Hearing (Virtual) held on 11 July 2023

Site visit made on 12 July 2023

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2023

Appeal Ref: APP/C1950/W/23/3316025

Roebuck Farm, Lemsford, AL8 7TW

- 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 Shortgrove Developments Ltd against the decision of Welwyn Hatfield Council.
 - The application Ref 6/2022/1107/OUTLINE, dated 10 May 2022, was refused by notice dated 23 November 2022.
 - The development proposed is Outline application for the development of 33no. dwellings (Use Class C3) together with all ancillary works (all matters reserved except access).
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Decision

1. This appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought but with only access to be considered at this stage. Matters relating to layout, scale, appearance and landscaping are reserved for future consideration. I have determined the appeal on this basis.
3. A Unilateral Undertaking (UU) has been submitted which includes mechanisms which seek to provide affordable housing, biodiversity net gain, provision and management of open space and contributions towards local infrastructure. I will return to these matters later in this decision.
4. Revised plans were submitted which change the 'red line' boundary excluding areas including the western corner of the site in the location of the existing public footpath. This materially alters the size of the site and is not a minor amendment to the proposals. These plans were not before the Council at the time that it made its decision, and interested parties would not have been made aware of these revisions. Therefore, having regard to the principles established under Wheatcroft and in the interests of fairness and openness, these revised plans will not form any part of this assessment.
5. Notice had not been served on the owners of this piece of land in the western corner. However, the public footpath would be retained in this location and given the outline nature of the proposals I am satisfied that the development could be implemented without any changes to this piece of land. Consequently, in the circumstances of this case, and again having regard to the principles established under Wheatcroft, the failure to serve the appropriate certificates would not prejudice any owners in this case. As such I have proceeded to determine the appeal.

Main Issues

6. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.
- The effect of the proposal on the openness of the Green Belt
- The effect of the proposed development on the setting of the nearby listed buildings including Grade II listed The Old Cottage, The Sun Inn, Lemsford Mill, Mill House and No.37, on the character and appearance of the Lemsford Conservation Area and the effect on the non-designated heritage asset of Roebuck Farm and Farmhouse.
- The effect of the proposed development on the character and appearance of the area.
- 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

7. The National Planning Policy Framework (the Framework) sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; and the essential characteristics of Green Belts are their openness and their permanence. The Framework goes on to state that inappropriate development is harmful to the Green Belt. The construction of new buildings in the Green Belt should be regarded as inappropriate, and thus should be approved only if very special circumstances exist, unless they come within one of the categories in the closed list of exceptions in paragraph 149 of the Framework.
8. Of relevance to this appeal is that 'limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority' is listed as an exception in paragraph 149g. There is no dispute between the parties that the appeal scheme should be considered under the second bullet point of paragraph 149g of the Framework which relates to the development contributing to meeting an identified affordable housing need. Policy SADM 34 of the Emerging Local Plan 2016 (ELP) broadly echoes the requirements of the Framework in this regard as well as requiring that such development does not conflict with the purposes of including land within the Green Belt.
9. The Framework defines previously developed land (PDL) as 'land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.'

This excludes 'land that is or was last occupied by agricultural or forestry buildings...'

10. Planning permission was granted in 1991¹ on the western part of the site for the use of farmland and existing stables for horse livery purposes equestrian use. At that time the remainder of the site appears to have been in the same ownership, but a change of use was not sought. The appellant argues that the eastern part of the appeal site is within the curtilage of this developed land and therefore the whole site meets the Framework's definition of PDL.
11. Within the context of an appeal under section 78 of the Act it is not within my remit to formally determine the lawful use. However, I shall consider the evidence in this regard so far as it is material to this appeal. The land is open grassland, and enclosed with gated access to the existing stables. I have not been provided with a certificate of lawfulness to confirm the use of the land, however neither am I presented with any contradictory evidence regarding any alternative use. I am therefore satisfied that the paddock is now within the curtilage of the equestrian use. As such I find the appeal site to be PDL.
12. I have taken into account the observations of the Inspector for the appeal at Land at Maitland Lodge². It appears to me that the facts of that case turned on its own merits. Similarly, I have made a site specific assessment in this case. Under paragraph 149g I am also required to assess the effect on openness.

Openness

13. Openness has both spatial and visual dimensions. Visually, the appeal site is contained by housing to Lemsford Village, housing to Mill Close and a dense area of vegetation on one side, and the existing stables to the other. Although it is broadly open on the south eastern boundary. The site inclines from east to west. However, whilst layout is not for consideration, to achieve 33 dwellings, built form is shown indicatively across the majority of the site, including the higher ground. The proposed development could also include a planted buffer to the south eastern edge. This would provide some screening, albeit urban form would be apparent, both above the trees and particularly when trees and hedges are not in leaf.
14. Taking the above into account, the proposed development is likely to be readily perceived from the public footpath from both within the site and beyond. It would also be visible in glimpsed views from Lemsford Recreation Ground and Mill Close as well as the private views from the surrounding housing. Whilst the proposed screening would mitigate this impact, nevertheless I find that the increased urban form would be perceived and there would be a harmful effect on the visual openness of the green belt.
15. Spatially, in the main, the site is undeveloped, open land. There are presently a few barns, garages and stables, concentrated in one corner of the site and some fencing with the vast majority of the land an open field. It is clearly evident that the proposed development of up to 33 dwellings would result in a significant increase in built form in this location in terms of height, footprint and volume, introducing urban development into an area where there currently is none. As such there would be substantial harm to the openness of the Green Belt in this regard.

¹ NP/1991/0251/FP

² APP/V1505/W/22/3296116

16. Taking into account the fundamental change to spatial openness, which would be highly visible in localised public views, I find that the harm to openness would be substantial.
17. The Council are working on a new Local Plan (ELP). This process has considered an amendment to Green Belt boundaries which would remove the existing settlement of Lemsford from the Green Belt along with a parcel of land which corresponds with the appeal site which was proposed to be allocated for 27 dwellings. This was found to result in moderate harm to the Green Belt.
18. I have had regard to the background papers that have been put to me. However, this assessment of moderate harm was an overall conclusion informed by a consideration of the contribution of the site to Green Belt purposes. It was not an assessment of openness alone. Indeed, I note that the site is identified as making a 'significant contribution' to safeguarding the countryside from encroachment.
19. Furthermore, these recommendations were not taken forward. As such the consideration before me now is regarding development of a parcel of land within the Green Belt, adjoining a 'washed over' village, also within the Green Belt. This is notably different to the situation before the Local Plan Inspector.
20. Consequently, taken together the harm to both spatial and visual openness leads me to conclude that there would be substantial harm to the openness of the Green Belt. Consequently, the appeal scheme would be inappropriate development in the Green Belt in the terms of the Framework. It would also be harmful to the openness of the Green Belt and contrary to the Framework and Policy SADM34 of the ELP in this regard.
21. Policy RA10 of the Welwyn Hatfield District Plan 2005 (WHDP) mainly relates to landscape regions or character areas, and Policy D2 of the WHDP relates to the character of the area. Therefore, the policies set out above are more relevant to this main issue.

Heritage

Listed Buildings – Lemsford Mill, Mill House, Sun Inn, No. 37

22. Lemsford Mill is grade II listed and derives its significance from its original use as a Mill and its appearance which clearly reflects this use. It also holds historic significance as a focal point around which Lemsford Village has grown. The Grade II listed Mill House shares this historic significance, and also derives significance from its traditional appearance.
23. The Grade II listed Sun Inn dates from 1730-40 and the fabric and appearance of the building is of historic significance. It was originally a coaching Inn and therefore has historic significance in evidencing the evolution of the village, relevant to its location along the main route of the Great North Road. No. 37 is a 17th century house (former smithy), which derives its significance from its appearance as well as its historic connection to the uses within the village associated with the Great North Road.
24. These buildings are not directly connected to the wider surrounding farmland, nor do they border the open land of the appeal site. My attention is drawn to an historic view in which these listed buildings are visible, with the appeal site forming part of the wider rural setting of Lemsford. Nevertheless, as set out

above the separated rural surroundings do not form part of the setting of these listed buildings. As such the appeal site does not make an important contribution to the significance of these assets and consequently it does not form part of their settings.

Listed Building – The Old Cottage

25. The Grade II listed Old Cottage derives its significance from its traditional appearance as a late 17th Century Cottage. It directly adjoins the appeal site and therefore the adjoining rural land to its rear forms a direct part of its historic visual setting.
26. The development proposed would introduce modern housing development in close proximity to the Old Cottage. This would undermine views of the property from the east and would erode the rural context of its surroundings. It is not in dispute that there would be less than substantial harm to the setting of this heritage asset.

Lemsford Conservation Area (CA)

27. The Lemsford Conservation Area was designated during the course of this appeal. It derives its significance, as a whole, from its traditional form and appearance including physical evidence of its historic location around the Mill, on the route of the Great North Road, and in a wider rural setting and with a number of historic buildings.
28. The part of the site which contains the stable buildings and their immediate surroundings is within the CA. These traditional farm buildings make a positive contribution to the rural character of the surroundings and therefore to the significance of the CA in this regard. The part of the site which contains the open field immediately adjoins the rear of the buildings to Lemsford Village which are within the CA. Due to its proximity and visibility the open rural character of this land also forms a positive part of the setting of the CA.
29. The proposed development is shown to remove the stable buildings. There was some discussion at the hearing as to whether the barns could be converted or that there could be some references to farm-type design features in the proposed houses. However, a domestic appearance to the dwellings, along with associated formal gardens and paraphernalia is likely. Housing development is also proposed across the majority of the extent of the open field. The proposed development would therefore erode the rural qualities of the appeal site, which would have a harmful effect on the CA and its setting in this regard.
30. Consequently the proposed development would not preserve or enhance the character or appearance of the CA. It is agreed between the parties that this would result in less than substantial harm to this heritage asset.

Non designated heritage asset

31. The Farmhouse at Roebuck Farm has a modest amount of historic illustrative significance through its connection with the history of the village, the farmhouse having been constructed on land previously owned by the Roebuck Inn, a coaching inn. It is agreed that the surrounding barns do not include 16th/17th century historic fabric and therefore their value derives from their functional connection with the farm only. As such the surrounding open land, previously associated farmland and the associated buildings are also illustrative

of the original agricultural use connected to the farmhouse. Consequently, this group of buildings has minor illustrative historic significance.

32. The proposed development would retain the farmhouse. However, its historic connection with the surrounding open fields and the outbuildings would be lost. This would undermine its historic farm use. The replacement or conversion of the barns would also result in a clearly residential character to this area.
33. Therefore, the proposed development would erode the significance of this non-designated heritage asset through the loss of its farmland connections.

Summary

34. There would be less than substantial harm to the setting of the Grade II listed Old Cottage and to the Conservation Area. There would also be a loss of significance of Roebuck Farm and Farmhouse. However taking into account both the effect on the significant features of these assets, and their importance, the harm in this regard is minor. Nevertheless, in this respect, the proposed development would be contrary to Policy SADM 15 of the ELP which seeks to sustain and enhance the heritage asset in a manner appropriate to its function and significance, including respecting the setting of the asset.
35. The Framework advises that heritage assets are irreplaceable and should be conserved in a manner appropriate to their significance and that any harm requires clear and convincing justification. In terms of the Framework the harm to the Listed Building and the CA would be less than substantial. Nevertheless, this is a matter of considerable weight and importance. Paragraph 202 of the Framework and Policy SADM15 of the ELP requires me to weigh this harm against the public benefits of the scheme. I will turn to this matter later in this decision.

Character and Appearance

36. The appeal site is within the Middle Lea Valley West Landscape Character Area as set out in the Welwyn Hatfield Landscape Character Assessment (2005). This describes its key characteristics as including pastoral farmland and parkland. Derelict meadows are a feature of the area with scrub and trees giving it a well vegetated appearance.
37. The appeal site is partly stables and buildings associated with the equestrian use with the majority as open land, albeit there is some fencing associated with the grazing of the land. As such it makes a positive contribution to the landscape character in this regard. The site adjoins development in Lemsford. However, given the limited extent of the built form in this settlement it appears as a small group of buildings within the wider countryside, rather than an extensive urban backdrop. Nevertheless, the appeal site is more closely associated with the surrounding open land. Consequently, the undeveloped green nature of the field makes a positive contribution to the character of the surrounding countryside land.
38. The proposed development would introduce dwellings, and their associated access road, more formal landscaping and domestic activity and paraphernalia to this site. Whilst the public open space could contribute to a sense of rurality, private gardens would be unlikely to. This development would therefore alter the essential character of this land from mainly an open field to an urban housing development. This would significantly undermine the green open

features of the site and its rural character. As such it would be harmful to the character and appearance of the area in this regard.

39. As set out above, the site is visually contained. New planting is also proposed to the boundaries which would broadly follow the existing field pattern, as well as planting within the proposed open space. This would soften and partially screen the development. Nevertheless, the development would be visible in local views, particularly from the footpath, and this would be the case even with the proposed planting. Furthermore, the extent of the development is such that it would be a clearly urbanising feature, even considering its proximity to the existing built form in Lemsford, in these local views. Therefore, although the effect would be localised, the development would nevertheless be harmful to the character and appearance of the area.
40. As such the proposed development would be harmful to the character and appearance of the area. Therefore, it would be contrary to Policies D1, D2 and RA10 of the WHDP and Policies SP9 and SADM16 of the ELP. Together these seek high quality design which responds to the character and context of the area, and contribute to the conservation, maintenance and enhancement of the local landscape character.

Other Considerations

Emerging Local Plan

41. I have heard that there has been some recent progress and The Council have undertaken consultation on Main Modifications to the ELP in early 2023, with consultation that was ongoing at the time of the hearing into Further Main Modifications. The Local Plan Inspector has raised no objection to this site being allocated for housing, however it has not been included. The consideration of whether the site should be included within land designated as Green Belt or not is a matter for the development plan review process and not a S78 appeal. Nevertheless, the ELP does not affect the Green Belt status of this site for the purposes of this appeal.

Housing Need

42. The Council cannot demonstrate a five year supply of deliverable housing sites. The Annual Monitoring Report 2021-2022 indicates a 3.2 year supply. Furthermore, this has been a persistent issue and the Council's Housing Delivery Test results indicate that delivery has been below the requirement for the past 3 years, and according to the appellant's projections is likely to persist until at least late 2024/early 2025. Furthermore, the appellant is of the view that even if the ELP were adopted the Borough would still not be able to demonstrate a 5 year supply of deliverable housing sites, although this is disputed by the LPA. There is also an acute affordable housing need, with a considerable shortfall that has been ongoing for a number of years. Consequently, Welywn Hatfield also has a high affordability ratio for both rental and sales. In any event, there is no dispute that there is a critical need for both market housing and affordable housing.
43. I am presented with a number of appeals which attached weight to the provision of affordable housing within boroughs which have a shortfall. The majority of these decisions relate to different LPAs with a larger number of affordable units being provided. As such these circumstances are different.

Nevertheless, I have followed the approach of these Inspectors in forming a case specific assessment of the benefits of this scheme.

44. I am provided with a letter from a potential future developer, and assurances that the site is likely to come forward within 5 years. There is a therefore clear intention that there will be completions within 5 years, particularly in the absence of any detailed evidence to the contrary.
45. The proposed housing would help meet an identified and outstanding need and in particular the affordable housing would address the needs of a specific group with housing requirements for which there is serious under provision. Therefore, this is a significant benefit of the scheme. However the contribution that would be made by the development in question (33 dwellings, 12 of which would be affordable) would be modest.

Other

46. The development would provide the social and economic benefits of the provision of up to 33 dwellings in a somewhat accessible location. This would include temporary economic benefits during construction and expenditure from future residents. The buildings would also be constructed to a high standard of energy efficiency. Whilst the details at this stage are limited, this could be secured via condition.

Unilateral Undertaking

47. Policy H7 of the WHDP requires a minimum provision of 30% and Policy SP7 of the ELP requires a minimum of 35% affordable housing for this site. The S106 would secure 36% of the total number of dwellings as affordable housing units (12 units). The appeal scheme would therefore meet these requirements for the provision of affordable housing.
48. The S106 includes contributions towards Sustainable Transport & Highway Accessibility, libraries, secondary education, special needs and disabilities, waste service recycling, waste service transfer station contribution, youth contribution, Indoor Sports facilities, outdoor sports facilities, public open space, waste and recycling. These would be reviewed if the indicative development mix were to change or at reserved matters approval stage. I am provided with detailed evidence that these meet the tests and the amounts are fairly related in scale and kind to the development proposed.
49. The proposed development would include at least 0.3ha of open space including a play area. The S106 secures the future management of the on site open space which is necessary to ensure its provision and availability into the future. It is likely that the improvements to local public spaces and services set out above would not just be used by occupants of the development. Nevertheless, by their nature such contributions are necessary to mitigate adverse effects and therefore any indirect benefits in this regard are minimal.
50. Policy R11 of the WHDP and SADM16 of the ELP seeks that wherever possible development should positively enhance biodiversity. The S106 would also secure the provision of a 10% Biodiversity Net Gain, which would be delivered on nearby land at Roebuck Farm. It would also secure its maintenance for 30 years.

Green Belt Balance

51. The Government attaches great importance to Green Belts. Paragraph 148 of the Framework states that substantial weight should be given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
52. I have found harm to the Green Belt by reason of the proposed development's inappropriateness and substantial harm to openness, to which I attach substantial weight. This is in addition to the other minor harm to heritage assets, to which the Framework directs that I give considerable importance and weight. As well as the harm to the character and appearance of the area.
53. On the other hand I afford significant weight to the modest amount of housing and affordable housing which would be provided by the development for which there is a pressing and ongoing need in this borough. Along with the social and economic benefits of such provision. This is as well as other benefits outlined above including biodiversity net gain.
54. However, although I place significant weight upon the provision of housing, some of which would be affordable, even taken with the other benefits this does not overcome the substantial weight I must also give to any harm to the Green Belt as well as the totality of the harm to the other multiple important matters.
55. Therefore harm to the Green Belt by reason of inappropriateness, and the other harm resulting from the proposal is not clearly outweighed by the other considerations in this case. The very special circumstances necessary to justify the development therefore do not exist. Consequently, the proposed development would conflict with paragraph 148 of the Framework and SADM15 of the ELP the aims of which are set out above.

Heritage Balance

56. The Framework advises that heritage assets are irreplaceable and should be conserved in a manner appropriate to their significance and that any harm requires clear and convincing justification. In terms of the Framework the harm to The Old Cottage and the Lemsford Conservation Area would be less than substantial. Nevertheless, this is a matter of considerable weight and importance.
57. The benefits of the scheme are set out elsewhere in this report, and it is clear that the provision of housing is an important benefit. Accordingly, taking all the above into account, these benefits would outweigh the minor harm to the setting of the Listed Building and the Conservation Area. As such, the appeal scheme would be in accordance with the Framework in this regard.

Planning balance

58. The Council cannot demonstrate a 5 year supply of deliverable housing sites, therefore paragraph 11(d) of the Framework is engaged and policies which are most important for determining the application including restrictive policies preventing the development of housing are out-of-date. Nevertheless, that does not mean that they do not apply and overall the development conflicts with the plan as a whole. However, as set out above, the application of policies

relating to the Green Belt provides a clear reason for refusing the development proposed, as set out in footnote 7. This is the case notwithstanding my conclusion in relation to heritage matters. Consequently, the presumption in favour of sustainable development does not apply in this case.

Other Matters

59. An Ecology and Biodiversity Statement has been submitted with this appeal which concludes that, subject to conditions, there would be an acceptable effect on ecology including bats. This detailed evidence, as agreed by the Council's advisor therefore leads me to conclude that there would not be unacceptable harm to ecology.
60. The Council have concerns as to whether the signatories to the UU have the necessary authority to execute this deed. However, given my conclusions that even with the benefits listed, the appeal scheme should be dismissed, there is no need for me to make a formal determination on this matter.

Conclusion

61. The proposal would not accord with the development plan and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that this appeal should be dismissed.

H Miles

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

P Cairnes
R Channas
R Dakeyne
J Gardiner
A Gingell
P Patel
G Stoten
N Tiley

FOR THE LOCAL PLANNING AUTHORITY:

B Bowles
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G Gnanamorthy
R Lee
C Robinson
R Walker
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Richborough