The Planning Inspectorate

Appeal Decision

Site visit made on 3 August 2023

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2023

Appeal Ref: APP/H1033/W/23/3317979
Charlesworth Nursery and Garden Centre, Glossop Road, Charlesworth SK13 5HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Jeremy Pollitt of Beck Homes (Cheshire) Limited against the decision of High Peak Borough Council.
- The application Ref HPK/2021/0717, dated 21 December 2021, was refused by notice dated 22 September 2022.
- The development proposed is 2 no. dormer bungalows with associated access, infrastructure and landscaping works following the demolition of garden centre buildings.

Decision

1. The appeal is allowed and planning permission is granted for 2 no. dormer bungalows with associated access, infrastructure and landscaping works following the demolition of garden centre buildings at Charlesworth Nursery and Garden Centre, Glossop Road, Charlesworth SK13 5HB in accordance with the terms of the application Ref HPK/2021/0717, dated 21 December 2021, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are:

   - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
   - whether the appeal site is a suitable location for the development having regard to the development plan policies;
   - the effect of the proposed development on biodiversity; and
   - whether the 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

3. The appeal site is positioned between residential development and agricultural development. To the south are three recently constructed residential dwellings, to the east are agricultural buildings associated with Brentwood Farm with the farmhouse beyond. To the north and north west stand two other residential properties. Directly west of the appeal site are two residential properties fronting Glossop Road on either side of an access track. Further to the north, separated by Hargate Hill Lane, lies the Rugby Club.

4. The appeal site and the existing built form described above are sited close to but outside the defined settlement boundary of Charlesworth separated by a short section of field fronting Glossop Road. These buildings and the appeal site are within the Green Belt which extends around Charlesworth.

Whether inappropriate development in the Green Belt

5. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 sets out that the construction of new buildings is inappropriate within the Green Belt, subject to a number of exceptions. Relevant to this appeal is (e) limited infilling in villages. The appellant has also argued that the exception set out under (g) is relevant.

6. High Peak Local Plan (LP) Policy EQ 4 states that the Council will seek to protect the Green Belt and maintain its openness and permanence. EQ 4 further states within the Green Belt, planning permission will not be granted for development unless it is in accordance with national planning policy.

7. The Framework does not define 'limited', infilling' or 'villages'. There is no dispute between the parties that Charlesworth is a village. Paragraph 149 e) of the Framework does not specify that a proposal would need to be limited infilling within a defined village. As confirmed by the Wood judgement[1], the boundary of a village defined in a local plan may not be determinative for these purposes. Therefore, when considering whether a site is in a village, the decision maker should have regard to the situation on the ground, as well as any relevant policies.

8. The appeal site is on the edge of the densely built-up development within Charlesworth and lies within its more loosely developed fringes. The three newly constructed dwellings lie within close proximity to the defined village edge, with only the short section of field separating the cluster of buildings around the appeal site from the defined village boundary. With the exception of the Rugby Club building, there is no further built development beyond Hargate Hill Lane on this side of Glossop Road.

9. Slack Edges, which is denoted by stone-built entrance pillars and low level hedging and is seen not only with this cluster of dwellings/buildings but also clearly with the dwellings within the settlement boundary. Therefore, despite the development becoming looser, Slack Edges appears on the ground as a more logical edge to the settlement. For this reason, I consider that the appeal site, which is positioned closer to the defined village, would be located within a village for the purposes of applying the policy.

10. In my experience, in order to be infilling, a proposal must fill a space or gap between two other buildings or structures whether within a continuous built-up frontage or within built development. The Council has acknowledged that the proposed dwellings would be set between existing built form and would infill a gap between existing dwellings and farm buildings. It therefore follows that the proposal would be infilling within a village. The scheme proposes two dwellings and would therefore be very limited.

[1] Julian Wood v SSCLG, Gravesham Borough Council [2015] EWCA Civ 195

11. As I have found that the proposal would meet the exception within paragraph 149 set out under (e) there is no need for me to consider whether it would meet the exception under (g).

12. Consequently, the proposed development would not be inappropriate development within the Green Belt. The proposal would comply with Policy EQ 4 of the LP and paragraph 149 of the Framework which seeks to protect the Green Belt from inappropriate development. As the proposal complies with this policy and the provisions of the Framework an assessment on the effect on openness and whether very special circumstances apply is not required.

Suitable Location

13. LP Policy EQ 3 sets out outside the settlement boundaries, including the Green Belt, new development will be strictly controlled in order to protect the landscape's intrinsic character and distinctiveness. The policy identifies a number of exceptions where planning permission will be supported. From the list of exceptions, there are two which are of most relevance to this appeal. The first relates to the re use of redundant and disused buildings and/or the redevelopment of a previously developed site, where it does not have an adverse impact on the character and appearance of the countryside. The second relates to the limited infilling of a small gap capable of accommodating no more than two dwellings of a similar size and scale to the surrounding dwellings in an otherwise continuously built frontage.

14. No definition of 'previously developed site' for the purposes of Policy EQ 3 is before me. At the time of my visit, the site was occupied by a large, dilapidated building on the eastern boundary, a greenhouse, sections of a collapsed building, various pieces of equipment and significant areas of hardstanding. There was a substantial amount of vegetation and self-seeded bushes on the site. Nevertheless, the buildings and equipment are visible, and I was largely able to traverse the site on hard standing such that I do not consider the site has returned to its natural state or that structures on site blend into the landscape. For these reasons, I find that for the purposes of LP Policy EQ 3 the appeal site is previously developed.

15. The proposed development would see the introduction of two modestly sized dormer-bungalows, each with a detached garage set within well-sized plots. The overall design of the dwellings would be in keeping with properties found nearby such that the proposed scheme would not harm the surrounding landscape's intrinsic character and distinctiveness. This would match the findings of the Council, which indicated that the design of the development would contribute positively to the character and appearance of the area.

16. The proposal would involve the redevelopment of a previously developed site and does not have an adverse impact on the character and appearance of the countryside. Therefore, there is no need for me to consider whether it would meet the EQ 3 exemption with regards to limited infilling of a small gap.

17. I conclude that the proposed development would be in a suitable location as it would be located on a previously developed site and would not harm the surrounding landscape's intrinsic character and distinctiveness. It would therefore accord with LP Policy EQ 3. It would also accord with the overall aims of LP Policy H1, which amongst other things, seeks the effective reuse of land,

development to be well related to the existing pattern of development and of an appropriate scale for the settlement.

Biodiversity

18. LP Policy EQ 5 states that the biodiversity and geological resources of the Plan Area and its surroundings will be conserved and where possible enhanced by ensuring that development proposals will not result in significant harm to biodiversity or geodiversity interests. The policy then goes on to identify how this will be achieved, specifying a number of criteria.

19. The Framework at chapter 15 identifies how development is expected to conserve and enhance the natural environment. Paragraph 174 advises that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, minimising impacts on and providing net gains for biodiversity. Additionally, paragraph 180 identifies that when determining planning applications planning permission should be refused if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for.

20. The appeal site is not designated under any statutory ecological designation, including local designation. This is not disputed by the main parties. The wording of LP Policy EQ 5 requires that development proposals should conserve biodiversity by ensuring no significant harm to these interests. With regards to the appeal site there is no requirement under the policy to achieve an overall biodiversity net gain, albeit the supporting text does seek this where possible.

21. There is no disagreement between the main parties that the proposed scheme would result in a small loss of 0.18 habitat units at the site and a small gain in hedgerow units of 0.16 units. Nonetheless, this would result in a small loss of biodiversity overall with regard to habitat units on site. The appellant has sought to provide an off-site contribution to overcome this loss. However, no mechanism to secure such a contribution is before me. Even if such a mechanism was provided, the Council have confirmed they could not accept an off-site contribution as there must be a valid scheme for the financial contributions to be allocated to which the Council does not have.

22. Consequently, as the appeal site does not form part of a designated biodiversity site and the proposal would not result in significant harm to biodiversity, it would accord with the aims of LP Policy EQ 5. However, the proposal would conflict with the provisions of the Framework in so far as it seeks new development to provide net gains for biodiversity.

Other Matters

23. Interested parties have raised concerns about the potential effect of the proposed development on nearby social and physical infrastructure. However, there is no substantive evidence before me to conclude that the introduction of two new dwellings in this location would be detrimentally harmful to such infrastructure. Additionally, given the likely low speeds of vehicles entering and exiting the appeal site entrance and existing sightlines, I have no concerns regarding highway safety.

Planning Balance

24. LP Policy EQ 5, with regard to none designated sites, is inconsistent with the Framework, as it does not require net gains for biodiversity.

25. Framework paragraph 11. d) ii. states that 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 Framework sets out that the purpose of the planning system is to contribute to the achievement of sustainable development through the delivery of the mutually dependent economic, social and environmental objectives.

26. The starting point for any planning decision is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. Development which would conflict with and undermine the strategy of an approved development plan and the Framework when read as a whole would, in planning terms, be harmful.

27. The proposal would have the social benefit of providing two new homes to the Council's housing stock. From an economic perspective, there would be short-term benefits arising from the construction phase and modest longer term benefits related to increased expenditure arising from the future occupiers. Notwithstanding the loss of habitat there would also be some environmental benefit through the provision of additional hedgerow units, bat boxes, bird boxes and log piles. Given the scale of the scheme, I attach modest weight to each of these benefits.

28. Balanced against these benefits would be the harm resulting from a small loss of biodiversity habitat, contrary to paragraph 174 of the Framework. Based on my observations on site and the evidence before me, much of the habitat to be lost is poor quality. As such, I attach little weight to this harm.

29. I have taken into consideration that the appellant has sought to provide off-site mitigation, but this route is not available for the reasons identified. I have also taken into consideration paragraph 180 of the Framework, which identifies proposals that significantly harm biodiversity, should be refused. However, there is no substantive evidence before me to conclude that the proposed development would result in significant harm to biodiversity. As such, and having regard to the evidence before me, any adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.

Conditions

30. The Council have suggested that 12 conditions be imposed, which I conclude on below. In imposing conditions, I have had regard to the approach in the Framework and the Planning Practice Guidance. I have accordingly combined and modified the wording or form of certain conditions without altering their fundamental aims. Where a pre-commencement condition has been imposed this has been agreed by the appellant.

31. In addition to the statutory time limit condition, a condition specifying the plans that are approved and that the development shall be undertaken in accordance

with them is required in the interests of certainty. To protect the character and appearance of the area, it is also necessary to impose a condition requiring details of the external surfaces of the development and have these approved by the Council.

32. The Council did not, as part of the list of proposed conditions, provide the reasons why they consider each were necessary. In particular, it was not explained why it would be necessary for a revised Biodiversity Enhancement Scheme to be submitted and agreed prior to commencement of development. In the absence of any substantive evidence as to why this is required before development commences, these details can be provided prior to development commencing above slab level. The condition is necessary in the interests of biodiversity.

33. In the interests of highway safety and neighbouring amenity, a condition is necessary to ensure the preparation of a Construction Method Statement. This condition must be pre-commencement so that it covers the whole development process, including demolition and site clearance. This is because substantial works of demolition and clearance are required before the development can commence.

34. A landscaping condition is necessary in order to ensure the proposed landscaping is of good quality and completed and maintained, I have also incorporated the requirement to submit boundary treatment details as part of this condition.

35. To ensure adequate provision and appropriate layout of car parking spaces and accessibility for service and delivery vehicles, a condition is needed. A condition on bins storage to ensure sufficient and suitable facilities are provided for the storage and collection of household waste is also required.

36. Conditions are also required in relation to contamination and any unexpected contamination in the interest of safety.

37. A condition regarding visibility splays to the existing access to Glossop Road is not necessary. This is because there is a recently constructed access that provides adequate visibility for vehicles entering and exiting Glossop Road. Similarly, given the appeal sites distance from the road a condition to restrict the positioning of gates is not needed.

Conclusion

38. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

A Hickey

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 21-118-P01, 21-118-P02, 21-118-P03, 21-118-P04, 21-118-P05 and 21-118-P06.

3) No development shall take place, including any works of demolition or site clearance, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
   a) Details of storage of plant and materials used in demolition (if any) and constructing the development;
   b) Site accommodation (if any);
   c) The parking of vehicles of site operatives and visitors;
   d) Loading and unloading of plant, machinery, and materials and access and egress;
   e) The arrangements for deliveries associated with all construction work and demolition (if any)

   The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

4) No development above slab level shall commence until details of the materials to be used in the construction of all external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

5) No development above slab level shall commence until a revised Biodiversity Enhancement Scheme including details of bat/bird boxes and log piles to be provided within the site has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and shall be retained thereafter.

6) No development above slab level shall commence until details of both hard and soft landscape works including details of boundary treatments have been submitted to and approved in writing by the local planning authority. The scheme of Soft and Hard Landscaping works, including boundary treatments, shall be implemented in full accordance with the approved details and timetable. If, within a period of 5 years from the date of planting, any tree or plant (or any tree or plant planted in replacement of them) is removed, uprooted, destroyed or dies or becomes seriously damaged or defective, another tree or plant of a similar size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree or plant.

7) Prior to occupation of any building hereby approved, remediation in accordance with the approved remediation strategy, LK Consult, "Updated Phase 2 Geoenvironmental Investigation, Risk Assessment And Remediation Strategy" (ref: CL-602-LKC 21 1413-02 Report version R1), dated December 2021 shall be undertaken in full.

   Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be produced and submitted to the local planning authority within 21 days of the report being completed and approved in writing by the local planning authority.

8) The development shall not be occupied until the car parking and road layout as shown on approved drawing 21-118-P02 shall be laid out in full. They shall thereafter be retained at all times for their designated purpose.

9) The development shall not be occupied until the bin dwell area for the storage of bins and collection of waste as shown on approved drawing 21-118-P02 has been provided, with the facility being retained for the designated purposes at all times thereafter.

10) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the Local Planning Authority. The remediation strategy shall be implemented as approved.

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