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# Appeal Decision

Site visit made on 12 February 2019

**by Helen B Hockenhull BA (Hons) B.PI MRTPI**

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

**Decision date: 15 March 2019**

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**Appeal Ref: APP/J1535/W/18/3206950**

**Stoneshot Farm, Hoe Lane, Nazeing, Waltham Abbey, EN9 2RW**

- 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 Haycross Ltd & Hog Construction Ltd against the decision of Epping Forest District Council.
  - The application Ref EPF/3500/17, dated 21 December 2017, was refused by notice dated 20 June 2018.
  - The development proposed is the demolition of existing industrial buildings, vacant stabling and 5 bed residential apartment and the construction of 18 no. semi-detached houses and 18 No. affordable houses with associated off-street car parking, private gardens and landscaping.
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## Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing industrial buildings, vacant stabling and 5 bed residential apartment and the construction of 18 no. semi-detached family houses and 18 No. affordable houses with associated off-street car parking, private gardens and landscaping at Stoneshot Farm, Hoe Lane, Nazeing, Waltham Forest, EN9 2RW in accordance with the terms of the application, Ref EPF/3500/17, dated 21 December 2017, subject to the conditions in the attached schedule.

## Procedural Matter

2. A signed and dated Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 was submitted by the appellant during the appeal process. The Undertaking contains obligations relating to affordable housing, early years, and primary education provision.

## Main Issues

3. The main issues in this case are:
  - whether the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy and the effect of the development on the openness and purposes of the Green Belt;
  - whether the appeal site forms a suitable location for residential development;

- if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

### **Reasons**

4. The appeal site is a former pig and poultry farm complex that has diversified into stabling, livery and B1, B2 and B8 industrial uses. The wider site includes a ménage and paddock areas used for the grazing of horses. A ribbon of existing residential properties on Hoe Lane and a nursery complex lie to the south of the site.
5. The access to the site is from a narrow drive leading from Hoe Lane. Along its length are a number of trees subject to Tree Preservation Orders. A public right of way runs to the south and east of the site. The site is located within the Metropolitan Green Belt.
6. There is an extant planning permission<sup>1</sup> on the site for the construction of 8 detached family homes and 10 affordable houses.

### *Inappropriate development and openness*

7. The construction of new buildings in the Green Belt, is inappropriate unless it is for certain exceptions. In this case, of most relevance is the limited infilling or partial or complete redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing use.
8. There is no dispute between the parties that the site is previously development brownfield land. In terms of the impact on the openness of the Green Belt, the existing site includes a number of buildings with an overall footprint of around 3483 square metres ranging in height from 2 metres to 8.6 metres. There are large areas of hardstanding around the existing buildings to the west of the site and a large ménage to the east of the drainage ditch which runs through the site.
9. I am advised that the footprint of the approved residential development would be approximately 1942 sq. metres with all the new houses being 2 storey in height. The appeal scheme, whilst increasing the number of dwellings on the site to 36, proposes a range of smaller market dwellings. The footprint of the appeal scheme would be around 2127 sq metres. Whilst this is slightly greater than the approved scheme, it would still result in a 38% reduction in built development on the site.
10. The appeal proposal extends built development into previously undeveloped parts of the site. Therefore, it would have a greater impact on openness than the existing use and in terms of the purposes of the Green Belt would result in encroachment into the countryside. However, I have had regard to the extant planning permission on the site. The site areas are the same. Therefore, the appeal scheme would have no greater impact on the openness of the Green Belt than the extant scheme. This forms a material consideration in this appeal.

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<sup>1</sup> EPF/0259/16

11. As I have found harm to the openness of the Green Belt, the appeal scheme would form inappropriate development and conflict with paragraph 145 of the Framework. It would also fail to comply with Saved Policies GB2A and GB7A of the Epping Forest District Local Plan and Alterations 2006 which aim to protect the Green Belt from inappropriate development. However, having regard to the extant permission on the site and the reduction in overall built floor area, I attribute limited weight to this harm.

*Appropriate location for residential development*

12. The appeal site lies approximately 1km from the hamlet of Nazeing. The hamlet is dispersed in character and has limited services and facilities. The Parish Church lies around 700 metres from the site, with a restaurant approximately 900 metres away and a local public house at around 1.4 km distance. The village Post Office in Lower Nazeing is approximately 2.4 km and the nearest Primary School is around 1.9km from the appeal site. It is approximately 900 metres walk to the closest bus stop.
13. I noted on my site visit that Hoe Lane forms a narrow country lane with no footpaths and is unlit. Bearing in mind the distances to facilities and public transport options, I consider that future residents would be likely to make use of the car. I therefore conclude that the appeal site has poor accessibility and the development would not meet the objectives of the Framework to promote the use of sustainable transport. The proposal would conflict with Saved Local Plan Policies CP1, CP2, ST1, ST2 and T1 which seek to locate new development in places where walking, cycling and the use of public transport can be encouraged.
14. Notwithstanding the above, I am cognisant of the extant planning permission on the site for 18 dwellings including 10 affordable units. The increased number of dwellings proposed in the appeal scheme makes no difference to the accessibility of the site. Accordingly, I give limited weight to this policy conflict.

*Other considerations*

15. The appellant has put forward several other considerations in favour of the proposal. The Council cannot currently demonstrate a 5-year supply of housing land. The appeal scheme would therefore make a significant contribution to the supply of housing in the borough. The development also proposes a 50% provision of affordable houses, 18 units. This would be more than the 40% requirement set out in Saved Policy H2 of the Local Plan. I therefore attribute significant weight to these benefits.
16. The appeal site, a former pig and poultry unit, has diversified into a range of industrial and commercial uses. The proposed residential use would result in a reduction in HGV traffic using Hoe Lane, a narrow rural road. This would have benefits for road safety, the living conditions of the occupants of nearby dwellings and also in terms of air quality. I afford this significant weight in favour of the scheme.
17. The appellant has provided a report on the Commercial Viability of the site. This concludes that without further expansion and improvement in the quality of the buildings and having regard to the number of commercial properties currently on the market which provide better accommodation and access, a

commercial use is not viable. I have no reason to disagree with these findings, to which I give significant weight.

18. The removal of the industrial uses from the site would reduce environmental impacts such as noise, again benefitting nearby residents. However, as the nearest houses are located to the east of the site and not immediately next to the existing buildings I afford this limited weight.
19. The proposed houses would be constructed to a high standard using sustainable methods. The development would incorporate electric car charging points, low water use and biodiversity gains in order to meet the requirements of Policy E1 of the draft Local Plan. The approved scheme is not required to meet these standards and thus there would be some environmental gain. However, as these matters are required by policy, this does not weigh either for or against the scheme. I therefore view it as a neutral factor.

#### *Very Special Circumstances*

20. The Framework in paragraph 143 states that inappropriate development, is by definition harmful to the Green Belt and should not be approved except in very special circumstances.
21. I have identified that substantial weight arises against the proposal as a result of it being inappropriate development in the Green Belt, causing harm to openness. Albeit I have assessed this harm to be limited. In terms of the appropriateness of the site for residential development, considering the extant permission, I give limited weight to the harm resulting from this policy conflict.
22. Against these harms I have identified significant benefits in terms of the provision of both market and affordable housing. I have also attributed significant weight in favour of the redevelopment due to the lack of commercial viability for the existing uses and the benefits of the reduction in HGV traffic. I have also afforded limited weight to the environmental gains resulting from the cessation of industrial uses.
23. Collectively I consider that the above benefits clearly outweigh the totality of the harm I have identified. These then represent the very special circumstances, as set out in the Framework, sufficient to justify a proposal for inappropriate development in the Green Belt.

#### **Other matters**

24. The Council has brought my attention to the emerging Local Plan. This allocates sites for development whilst also taking account of new homes to be brought forward through existing planning permissions. The Plan would secure 5.3 years supply of housing land so that unallocated sites in the Green Belt in less sustainable locations would not be required to meet housing need.
25. It appears to me that this ignores the fact that the appeal site has an extant planning permission and would therefore already be included in the supply. Additional dwellings on the site, as put forward in the appeal scheme would meet the objective of the Framework to significantly boost the supply of housing.
26. A further material consideration since the original planning application was determined, is the enactment of the Conservation of Habitats Regulations 2017

and recent case law<sup>2</sup>. Natural England provided advice to the Council in September 2018 with regard to new development in the borough. This states that development within 6.2 km of the Epping Forest Special Area of Conservation (SAC) is likely to have an adverse impact due to increased visitor pressure. Furthermore, any new residential or commercial development in the borough is likely to have an impact on air pollution. In this case, as the appeal site lies more than 6.3 km from the SAC, the issue of air pollution is relevant.

27. The Council is working with Natural England and other neighbouring authorities towards establishing a mechanism for collecting contributions that would be used to offset any potential impact because of air pollution on the SAC, and a Mitigation Strategy which would identify specific measures or projects.
28. In the appeal case, it is evident that the cessation of industrial activities would result in a significant reduction in HGV movements. Overall this would have a positive impact on air pollution. The appeal scheme would therefore be unlikely to give rise to significant effects on the Epping Forest SAC either alone or in combination with other projects. As competent authority in this case, I conclude that the proposal would not need to be the subject of a project level Habitat Regulation Assessment.

### **Planning Obligation**

29. The appellant has submitted a Unilateral Undertaking dated 28 February 2018 under section 106 of the Town and Country Planning Act 1990. The obligation is intended to provide for a number of matters. Firstly, it makes provision for not less than 50% of the total number of dwellings to form affordable homes. This exceeds the requirement of Saved Policy H5A of the Local Plan and Policy H2 of the submission Local Plan. I am satisfied that there is a clear basis for this requirement.
30. The obligation also provides for an early years and childcare contribution to provide additional early years and child care places in the Lower Nazeing Ward. It also includes a primary education contribution to provide for additional primary school places at Nazeing Primary School. This complies with Saved Policy I1A of the local plan which seeks the necessary planning obligations to mitigate the impacts of development. As these contributions directly relate to the proposal I consider they are appropriate.
31. In respect of the above obligations, I am satisfied that no more than 5 contributions have been collected in respect of each of the above matters. Therefore, the pooling restrictions of Regulations 123 of the CIL Regulations are not breached. I am also satisfied that the obligations are necessary to make the development acceptable in planning terms, that they are directly related to and are fairly and reasonably related in scale and kind to the development. I therefore consider that the submitted obligation meets the tests set out in paragraph 56 of the Framework and the CIL Regulations 2010 and should be given significant weight.

### **Conditions**

32. I have considered the conditions put forward by the Council in light of the requirements of the Framework and national Planning Practice Guidance. I

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<sup>2</sup> Wealden District Council v Secretary of State for Communities and Local Government and Lewes District Council and Natural England (2107) EWHC Admin

have revised the wording where necessary in the interests of clarity and to better reflect the guidance.

33. In addition to the standard timeframe condition I impose a condition specifying the approved plans for the avoidance of doubt. In order to protect the character and appearance of the area, condition 3 is necessary to require details of the proposed materials to be submitted and agreed. Condition 9 is needed to ensure a satisfactory landscaping scheme is implemented and maintained. So that the site is properly drained and to ensure that surface water runoff is appropriately managed conditions are necessary requiring the submission of a foul and surface water drainage strategy, a flood risk assessment and management and maintenance plan, (conditions 4 and 12).
34. In the interest of highway safety, the provision of wheel wash facilities on site during construction is required (condition 5) and vehicle parking and turning facilities should be provided before the first occupation of the dwellings (condition 11). Permitted development rights are removed by condition 6 so that the Council retains control over further development which may impact on the openness of the Green Belt and character and appearance of the area.
35. To safeguard trees on the site and protect and enhance biodiversity, conditions 7, 8, 10, 23 and 24 are necessary. These ensure appropriate lighting is provided, trees are protected during construction works, works to protected trees are controlled, a biodiversity enhancement plan is prepared and implemented, and breeding birds are protected in the nesting season.
36. As a result of the potential for on-site contamination from past uses on the site, conditions 13, 14, 15, 16, 17, 18 and 19 are necessary to ensure that risks are minimised, and contamination is appropriately mitigated. The Council has suggested wording requiring that contamination and remediation conditions be discharged in a certain order as they are interlinked. However, I do not consider that this is necessary as the wording of the conditions makes this clear.
37. In the interest of protecting the living conditions of existing and future residents, condition 20 controls the hours of operation on the site. Condition 21 requires the provision of electric charging points to all new dwellings to support improvements to air quality. Condition 22 is necessary to provide measures to address the existing water stress in the borough.

## **Conclusion**

38. For the reasons given above and having regard to all other matters raised, I allow this appeal.

*Helen Hockenhull*

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: Existing Buildings Plan Drawing No. - 10707-S001, Site Plan Drawing No. 13184-P001-B, Proposed Elevation Drawing No. 13184-P002-A, Proposed Floorplans Layouts 2 Drawing No. 13184- P003-B, Location and Block Plan Drawing No 13184-P004-B, Site Survey as Existing Sheet 1 Drawing No. TJK279.1, Site Survey as Existing Sheet 2 Drawing No. TJK279.2, Tree Protection Plan dated 18th December 2017 Rev:1.
- 3) No construction works above ground level shall take place until samples of the types and colours of the external facing materials have been submitted to and approved by the local planning authority in writing prior to the commencement of the development. The development shall be implemented in accordance with such approved details.
- 4) No development shall take place until details of foul and surface water disposal have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with such agreed details.
- 5) No development shall take place until wheel washing or other cleaning facilities for vehicles leaving the site during construction works have been installed in accordance with details which shall be submitted to and agreed in writing by the local planning authority. The approved installed cleaning facilities shall be used to clean vehicles immediately before leaving the site.
- 6) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 as amended (or any other order revoking, further amending or re-enacting that order) no extensions or outbuildings generally permitted by virtue of Classes A, B and E of Part 1 of Schedule 2 to the Order shall be undertaken without the prior written permission of the local planning authority.
- 7) Prior to any lighting being installed along the road leading to the new development, a detailed lighting scheme following the Bat Conservation Trusts guidelines shall be submitted to and approved in writing by the local planning authority. Any lighting thereafter installed shall be in accordance with the approved details.
- 8) Prior to any work being done to trees along the road leading to the new development, an updated bat survey of these trees shall be submitted to and approved in writing by the local planning authority. Any further surveys, licenses or mitigation recommended by this survey shall also be undertaken and shall be submitted to and approved in writing by the local planning authority prior to the commencement of any works to the trees.
- 9) No development shall take place, including site clearance or other preparatory work, until full details of both hard and soft landscape works (including tree planting) and implementation programme (linked to the development schedule) have been submitted to and approved in writing by the local planning authority. These works shall be carried out as approved. The hard landscaping details shall include, as appropriate, and

in addition to details of existing features to be retained: proposed finished levels or contours; means of enclosure; car parking layouts; other minor artefacts and structures, including signs and lighting and functional services above and below ground. The details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers /densities where appropriate. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective another tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

- 10) No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan and Arboricultural Method Statement in accordance with BS:5837:2005 (Trees in relation to construction) has been submitted to the local planning authority and approved in writing. The development shall be carried out only in accordance with the approved Tree Protection Plan and Arboricultural Method Statement unless the local planning authority gives its written consent to any variation.
- 11) Prior to the first occupation of the development the access arrangements, vehicle parking and turning areas as indicated on the approved plans shall be provided, hard surfaced, sealed and marked out. The access, parking and turning areas shall be retained in perpetuity for their intended purpose.
- 12) A flood risk assessment and management and maintenance plan shall be submitted to and approved by the local planning authority prior to commencement of development. The assessment shall include calculations of increased run off and associated volume of storm detention using WinDes or other similar practice tool. The approved measures shall be carried out prior to the substantial completion of the development and shall be adequately maintained in accordance with the management and maintenance plan.
- 13) No development shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved by the local planning authority:
  - a) A site investigation scheme based on the Phase 1 Desktop Study report (Herts and Essex Site Investigations September 2013) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
  - b) The results of the site investigation and detailed risk assessment referred to in (a) and based on these, an options appraisal and remediation strategy giving full details of the remediation measures.
  - c) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (b) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and



arrangements for contingency action. Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

- 14) No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.
- 15) No development shall take place until a Phase 1 Land Contamination investigation has been carried out. A protocol for the investigation shall be submitted to and approved in writing by the local planning authority before commencement of the Phase 1 investigation. The completed Phase 1 report shall be submitted to and approved in writing by the local planning authority prior to the commencement of any necessary Phase 2 investigation. The report shall assess potential risks to present and proposed humans, property including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments and the investigation must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11", or any subsequent version or additional regulatory guidance.
- 16) Should the Phase 1 Land Contamination preliminary risk assessment carried out under condition 15 identify the presence of potentially unacceptable risks, no development shall take place until a Phase 2 site investigation has been carried out. A protocol for the investigation shall be submitted to and approved in writing by the local planning authority before commencement of the Phase 2 investigation. The completed Phase 2 investigation report, together with any necessary outline remediation options, shall be submitted to and approved by the local planning authority prior to any redevelopment or remediation works being carried out. The report shall assess potential risks to present and proposed humans, property including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments and the investigation must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11", or any subsequent version or additional regulatory guidance.
- 17) Should Land Contamination Remediation Works be identified as necessary under condition 16, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use has been submitted to and approved by the local planning authority. The development shall be carried out in accordance with the

approved remediation scheme unless otherwise agreed in writing by the local planning authority. The remediation scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures and any necessary long-term maintenance and monitoring programme. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 or any subsequent version, in relation to the intended use of the land after remediation.

- 18) Following completion of measures identified in the approved remediation scheme and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the local planning authority for approval. The approved monitoring and maintenance programme shall be implemented.
- 19) In the event that any evidence of potential contamination is found at any time when carrying out the approved development that was not previously identified in the approved Phase 2 report, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with a methodology previously approved by the local planning authority. Following completion of measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with the immediately above condition.
- 20) All construction/demolition works and ancillary operations, including vehicle movement on site which are audible at the boundary of noise sensitive premises shall only take place between the hours of 07.30 to 1830 hours Monday to Friday and 0800 to 1300 hours on Saturday and at no time during Sundays or Public/bank holidays unless otherwise agreed in writing by the local planning authority.
- 21) An electric vehicle charging point shall be provided for each of the approved dwellings prior to first occupation.
- 22) Prior to first occupation measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day.
- 23) Prior to first occupation of the dwellings hereby approved a biodiversity enhancement plan shall be submitted to and agreed in writing by the local planning authority. This should include the recommendations in the Ecology report dated December 2017 by Applied Ecology Ltd and include bird and bat boxes.
- 24) No removal of hedgerows, trees or shrubs or works to or demolition of buildings or structures that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active bird nests immediately before the vegetation is cleared/demolition is started and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting

bird interest on site. As such written confirmation shall be submitted to and approved in writing by the local planning authority.