The Planning Inspectorate

Appeal Decision

Hearing held on 9 September 2014
Site visit made on 9 September 2014

by David Nicholson RIBA IHBC

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

Decision date: 24 September 2014

Appeal Ref: APP/N0410/A/14/2220241
Hitchambury Farm, Hitcham Lane, Taplow, Buckinghamshire SL6 0HG

- 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 Steve Clapp against the decision of South Buckinghamshire District Council.
- The application Ref. 13/01546/FUL, dated 16 September 2013, was refused by notice dated 12 December 2013.
- The development proposed is demolition of vacant farm sheds and construction of a new 5 bed detached dwelling, together with separate garage and associated landscaping.

Decision

1. **The appeal is allowed** and planning permission is granted for demolition of vacant farm sheds and construction of a new 5 bed detached dwelling, together with separate garage and associated landscaping at Hitchambury Farm, Hitcham Lane, Taplow, Buckinghamshire in accordance with the terms of the application, Ref. 13/01546/FUL, dated 16 September 2013, subject to the conditions set out in the attached Schedule.

Procedural matters

2. A unilateral Deed of Undertaking, under section 106 of the Town and Country Planning Act 1990 (s106), would ensure the installation and subsequent performance monitoring of a novel type of heat store.

3. The recent High Court judgment in *Redhill*[1] found that the planning balance to be struck for proposals within the Green Belt should concern *any other harm* to the Green Belt and not *any other harm* from other matters, as was previously the case. I have reached my Decision on this basis.

Main Issues

4. The main issues are:
   (a) whether the proposal would amount to *inappropriate development* in the Green Belt and, if so, whether *very special circumstances* exist to clearly outweigh this and any other harm to the green belt;

[1] Redhill Aerodrome Ltd v SSCLG, Tandridge District Council, Reigate and Banstead Borough Council [2014] EWHC 2476 (Admin)

(b) whether granting permission could be used to justify further harmful development in the Green Belt.

Reasons

5. The appeal site lies to the north of Hitcham Lane just beyond the edge of the village of Taplow. It is currently vacant comprising a disused yard, access track, hardstandings and dilapidated farm buildings. Some of these structures may contain asbestos. The proposed house would be of an unusual modern design, including a rectilinear cantilever, a grass roof and well-considered landscaping, and much of it would be below the existing ground level. It would aim to exceed the zero carbon targets when in use, which form the basis of the principles of *Passivhaus* (passive house) design.

6. The site also lies within the Metropolitan Green Belt. Paragraph 88 (section 9) of the National Planning Policy Framework (NPPF) requires that substantial weight should be given to any harm to the Green Belt which, by definition, includes *inappropriate development*, and states that such development should not be approved except in *very special circumstances*. With a limited number of exceptions (paragraph 89), the NPPF regards the construction of new buildings as *inappropriate development* in 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, is clearly outweighed by other considerations.

7. Without sufficient evidence to demonstrate that the site now has a nil use, and so could be considered as redevelopment of a previously developed site (NPPF paragraph 89, bullet point 6), the appellant acknowledged that the proposed house would be *inappropriate development* in the Green Belt. He went on to put forward the particulars of the proposal as *very special circumstances* including:

   i) that there would be far greater energy saving than under *Passivhaus* by employing an untried and innovative system of inter-seasonal heat storage called a Seasonal Thermal Energy Store (STES);

   ii) that the design would demonstrate that the principles of *Passivhaus* could be adapted to more exciting designs and so extend their potential use.

8. For these, and other reasons set out below, the appellant argued that the scheme would promote sustainable development in rural areas and so satisfy NPPF paragraph 55 which seeks to avoid new isolated homes in the countryside unless there are special circumstances such as the exceptional quality or innovative nature of the design of the dwelling, which should:

   – be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;

   – reflect the highest standards in architecture;

   – significantly enhance its immediate setting; and

   – be sensitive to the defining characteristics of the local area.

   The Council argued that paragraph 55 was not relevant to proposals in the Green Belt. However, while this refers to rural areas it does not specifically exclude the Green Belt and so I have considered these four tests before concluding on policy.

Innovation

9. The concept design for incorporating a STES (Document 6) shows that it is theoretically possible and feasible to store enough heat, generated by hot water solar panels during the summer months, to provide adequate heating and hot water all year round. While a simulation has been worked through, the system has not been tested in the field. With the university assistance, the appellant hopes to install and monitor this innovative system and thereby prove its potential. The s106 Undertaking would secure its installation, monitoring for at least 3 years, and the opportunity for the findings to be evaluated.

10. The Council argued that if the STES innovation was allowed to justify an exception to planning policy, further advances in energy efficiency could in turn be used to justify further exceptions to policy. In principle I accept this. Indeed, encouraging truly innovative designs would seem to be the point of the exception in paragraph 55. However, not only must each case be considered on its own merits, balancing all the relevant sustainability factors, but genuine and significant innovation is unlikely to occur so frequently as to lead to more than a very small number of exceptions.

11. From my extensive testing at the Hearing of the appellant's motives and his evidence, I am persuaded that the proposal is a *bona fide* effort to raise awareness and standards of energy conservation which might have a much wider application in the future. As such, the scheme would satisfy the test for innovative design in paragraph 55 of the NPPF.

Architectural standard

12. The *Passivhaus* system of solar heating and conservation has been around for a long time; other solar house designs have been around even longer. There is little that is innovative about its principles. Indeed, the Building Regulations are heading towards zero carbon requirements and the Council's Core Strategy (Policy CP12) is geared towards sustainability and will soon require much higher standards of insulation. Nonetheless, few examples of *Passivhaus* have been built in England. While there would be no guarantee of public access to the house, there would be glimpses from the along road and looking up the access drive which might help to inspire others to raise design standards.

13. The proposals aim to go well beyond current *Passivhaus* standards. One aim of the more modernist and contemporary approach to the house, including the cantilever, would be to encourage those seeking an exciting design as well as embracing the *Passivhaus* principles. The Berkshire, Oxfordshire, Buckinghamshire and Milton Keynes design panel (BOB MK) thought that the scheme was well-considered and thoughtful, and that it described a truly innovative architectural approach. The Council acknowledged that the house would be attractive and a visual enhancement, adding that the design made a refreshing change from the neo-Georgian pastiches with which it is often presented, but maintained that the architectural quality was of limited relevance to the Green Belt considerations.

14. On this point, I find that there is a tension between achieving zero carbon targets and creating an exciting design. Nevertheless, I find that the careful siting, composition and articulation of the architectural forms into a naturalistic

setting would reflect the highest standard in architecture and so satisfy this aspect of the paragraph 55 test. There would be no conflict with saved adopted policy EP3 of the South Bucks District Local Plan (LP) which seeks compatible designs.

Immediate setting

15. I saw that the views from road and the bridle path currently illustrate the negative impact of the existing buildings on the landscape. While I do not agree that *immediate setting* (paragraph 55, bullet point 4, sub-heading 3 of the NPPF) is necessarily the same as curtilage, whether the setting is drawn very tightly or includes wider public views, I find that these would be significantly enhanced, so achieving this requirement.

16. I agree with the Council that the main thrust of Green Belt policy with regard to decision making is to maintain its openness and undeveloped nature rather than any concerns over its attractiveness. Nevertheless, the NPPF advice on plan-making (paragraph 81) does refer to the improvement of damaged and derelict land.

Local characteristics

17. The proposed house would sit within a landscaped setting comparable with a number of nearby detached houses at the ends of long drives and consistent with this aspect of the tradition of English country houses. It would therefore satisfy the criterion of being sensitive to the defining characteristics of the local area. It is common ground (Document 5) that the proposals would not adversely affect the overall character of the landscape character area taken as a whole, but would enhance the landscape setting of the site from compared with its current appearance.

Other considerations

18. The appellant acknowledged that a few aspects of the sustainability of the house remain problematic. Although the location is fairly close to public transport and services, and a supermarket is about to be built less than a mile away, cycling close to the site is difficult. While the intention would be to use electric cars, and charging points could be built into the garage to encourage this, no mechanism was put forward to ensure that electric cars would be used by the appellant or by future occupiers. The existing structures and hardstandings would be recycled as far as possible, and pulverised fuel ash could be used in the concrete, but there would still be a requirement for a significant amount of cement and for substantial excavation. On the other hand, the appellant advised that he had installed a ground source heat pump into his present house around 10 years ago and his long term commitment to exploring alternative and renewable energy as part of sustainable development was not challenged. On balance, despite its semi-rural location, I find that this particular scheme would amount to sustainable development.

Conditions

19. As well as the standard conditions for commencement and plans, to protect the appearance of the area, control is needed over the facing materials, demolition, ground and building levels, relevant permitted development rights, existing and proposed landscaping, and boundary treatments. To protect the amenities of local residents, external lighting should be restricted.

20. In the interests of highway safety, the access, parking, garaging and layout should be altered and/or laid out before occupation.

21. Following concerns expressed with regard the possible effects of the proposed access to the site for construction traffic, the appellant has considered alternatives and confirmed that he would be content to be bound by a condition requiring a construction method statement, which would include access details, to be agreed before any development begins. I am satisfied that such a condition could safeguard the amenities of neighbouring residents and should be required.

Unilateral undertaking

22. The s106 obligation would ensure not only that the STES is installed but that the ongoing monitoring is funded. Given my reasoning above, this is necessary to provide some of the benefits which would justify the new house as a rare exception to Green Belt policy. It would therefore satisfy the tests for such obligations in paragraph 204 of the NPPF.

Conclusions

23. The proposals would amount to *inappropriate development* in the Green Belt and so I give substantial weight to the harm, by definition, that this would cause. The proposed house would therefore conflict with section 9 of the NPPF and with saved LP policy GB1, which only permits new buildings in certain circumstances, none of which applies here. There is no inherent reason why the innovative aspects of the scheme would have to be located in the Green Belt and NPPF paragraph 55 does not specifically deal with the Green Belt.

24. On the other hand, the NPPF does not require a sequential approach when looking at the merits of proposals in the Green Belt and there would be no guarantee that the opportunity presented, to fund, research and develop a thermal store and to develop an exciting, outstanding and innovative design using *Passivhaus* principles, would have occurred on another site. There is nothing to say that the special circumstances in paragraph 55 should not apply in the Green Belt, even if the planning balance is to be struck differently. On this point, I find that, with regard to the exceptional quality and innovative nature of its design, the proposed house would comply with all four of the tests in the last bullet point to paragraph 55 of the NPPF. Moreover, as I have found that the innovative aspects would cease to be new following a grant of permission, allowing this appeal would not set a precedent that could be easily or frequently repeated.

25. For the reasons given above, and having regard to all other matters raised, I conclude that, collectively, the benefits of the scheme would amount to *very special circumstances* of sufficient weight to clearly outweigh the harm to the Green Belt, and the conflict with LP policy GB1, such that it would accord with the NPPF and that the appeal should be allowed. No other significant harm has been identified so, even if I had followed the interpretation prior to *Redhill*, and struck the balance against both Green Belt and non-Green Belt harm, I would have reached the same conclusion.

David Nicholson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Emily Temple	Pegasus Group
Helen Seymour-Smith	Seymour-Smith Architects
Steve Clapp	Appellant
Andrew Cook	Pegasus Group

FOR THE LOCAL PLANNING AUTHORITY:

Harmeet Minhas	South Buckinghamshire District Council

INTERESTED PERSON:

George Sandy	Councillor for South Buckinghamshire District Council and Taplow Parish Council

DOCUMENTS

1 Notification of the Hearing
2 Unilateral Deed of Undertaking under s106 dated 9 September 2014
3 Minutes of Taplow Parish Council meeting held on 22 October 2013
4 List of conditions suggested by the appellant
5 Signed statement of common ground
6 Concept Design Document for a Seasonal Thermal Energy Store for Hitchambury Farm, prepared by Dr Shane Colcough, The Centre of Sustainable Technologies, University of Ulster
7 Article published online by the Architects Journal 4 July 2013

Schedule of conditions

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

2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the signed statement of common ground (Document 5) including the arboricultural tree protection plan.

3) The materials to be used in the construction of the external surfaces of the dwelling hereby permitted shall be as the submitted details.

4) No other development shall take place until all the existing structures have been demolished.

5) The development hereby permitted shall not be occupied until all materials arising from demolition have either been removed from the site or reused within the proposed dwelling.

6) No development shall take place until a survey has been carried out and full details of existing and proposed finished ground and floor levels and earthworks have been submitted to and approved in writing by the local planning authority (LPA). These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. The dwelling shall not be occupied until these levels have been achieved in accordance with the approved details.

7) Notwithstanding the provisions of Classes A, B and E of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no development shall take place other than that expressly authorised by this permission.

8) In this condition "retained tree" and "retained hedgerow" mean an existing tree or hedgerow which is to be retained in accordance with the approved drawings; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the date of the occupation of the dwelling.

   i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the LPA. Any topping or lopping approved shall be carried out in accordance with British Standard BS5837:2012.

   ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the LPA.

   iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas

shall not be altered, nor shall any excavation be made, without the written approval of the LPA.

9) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the LPA and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; hard surfacing materials; planting plans, specifications and schedules.

10) No development shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the LPA. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

11) No development shall take place until there has been submitted to and approved in writing by the LPA a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwelling is occupied unless in accordance with a timetable agreed in writing with the LPA. Development shall be carried out in accordance with the approved details.

12) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be submitted to and approved by the LPA before the dwelling is occupied. The landscape management plan shall be carried out as approved.

13) There shall be no external lighting other than as shown on the proposed lighting plan.

14) The development hereby permitted shall not be occupied until the existing means of access has been altered in accordance with details to be submitted to and approved by the LPA.

15) The development hereby permitted shall not be occupied until the parking, garaging and manoeuvring areas have been laid out in accordance with the submitted plans. The garage accommodation shall be kept available for the parking of vehicles ancillary to the dwelling and for no other use.

16) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the LPA. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

i) access to the site for construction traffic
ii) the parking of vehicles of site operatives and visitors
iii) loading and unloading of plant and materials
iv) storage of plant and materials used in constructing the development
v) the erection and maintenance of security hoardings
vi) wheel washing facilities
vii) measures to control the emission of dust and dirt during construction
viii) a scheme for recycling/disposing of waste resulting from demolition and construction works.