



Appeal Decision

Hearing Held on 13 February 2019

Site visit made on 13 February 2019

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 14 March 2019

Appeal Ref: APP/X0360/W/18/3193969

Hare Hatch Sheeplands Nursery, London Road, Twyford, Berkshire RG10 9HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Hare Hatch Services Limited against Wokingham Borough Council.
 - The application, Ref 173316, is dated 10 November 2017.
 - The development proposed is a temporary change of use of part glasshouse and small outdoor area from plant growing to nursery related restricted sales.
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Decision

1. The appeal is allowed and planning permission is granted for a temporary change of use of part glasshouse and small outdoor area from plant growing to nursery related restricted sales at Hare Hatch Sheeplands Nursery, London Road, Twyford, Berkshire RG10 9HW in accordance with the terms of the application, Ref 173316, dated 10 November 2017, subject to the following 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 following approved plans: 1:500 and 1:1000 application plans received by the local planning authority on 10 November 2017 and the Planning Statement dated 25 September 2017.
 - 3) The use hereby permitted shall be discontinued and all goods and paraphernalia associated with the retail use shall be removed from the application site on or before three years from the date of this decision.
 - 4) No goods shall be displayed or sold other than the following:
 - i.) Bought in plants for immediate sale – including bedding plants, shrubs, trees, house plants etc
 - ii.) Tools and equipment - including forks and spades, hedge shears, loppers, secateurs, gloves, boots etc
 - iii.) Growing media - including composts, grits, sands, bark etc
 - iv.) Fertilisers and chemicals – including fertilisers, pesticides, herbicides, lawn treatments, woodcare, salt etc

- v.) Irrigation - including micro watering systems, hose pipes, watering cans, accessories etc
- vi.) Landscaping and design - including plant supports, fencing, garden arts and ornaments, stones, aggregates, solar lights, etc
- vii.) Containers including - pots - indoor and outdoor (plastic and terracotta), seed trays, hanging baskets, patio tubs, accessories (pot feet, plant caddy's) etc
- viii.) Seeds and bulbs - including seeds, bulbs, seed potatoes, vegetable sets etc
- ix.) Bird/bee/wildlife care - including insect habitats, bird food, hedgehog house's etc
- x.) Grow your own - including netting, vegetable troughs, vegetable beds, plastic growing units (mini greenhouses), greenhouse accessories, allotment accessories etc
- xi.) Christmas trees, decorations and Santa's grotto (seasonal)

Procedural matters

2. An Enforcement Notice served in 2013, and an associated High Court Injunction obtained in 2017, prevents the unauthorised use of land at Hare Hatch Sheeplands. The terms of the Injunction though do not prohibit the submission of further planning applications.
3. Given the planning enforcement history in relation to Hare Hatch Sheeplands, which also includes a ruling that there was an Abuse of Process obtained by the appellant, it is clear that the relationship between the main parties is difficult. In determining this appeal however, I have reached my decision on the planning merits of the application before me.
4. The Council has provided a copy of its officer report on the application. Its conclusion was that if the appeal had not been made against non-determination it would have declined to determine the application in accordance with section 70C of the Town and Country Planning Act 1990. I have therefore treated this report as indicative of the decision the local planning authority would have taken in relation to the application if it had retained its jurisdiction.
5. Hare Hatch Services Limited is in liquidation. However, no evidence has been produced demonstrating that the company has been dissolved. Accordingly, I have determined the appeal on the basis that the right of appeal for Hare Hatch Service Limited remains.

Application for costs

6. An application for costs was made in advance of the hearing by Hare Hatch Services Limited against Wokingham Borough Council. An application for costs was also made in advance of the hearing by Wokingham Borough Council against Hare Hatch Services Limited. These applications are the subject of a separate Decision.

Main Issues

7. The main issues 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;
- the effect of the proposal on the character and appearance of the area; and,
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

8. Hare Hatch Sheeplands is located within the Metropolitan Green Belt where new development is strictly controlled. It comprises a nursery, which the appeal relates to, a café and a farm shop. The application is for a nursery related sales area for a temporary period of three years in order to allow the horticultural business to grow and provide sufficient time to review with the Council the requirements for the business.
9. The local planning authority has argued that the horticultural use and related plant sales at the nursery have been abandoned. Whilst some of the glass houses are not completely weather tight, I saw that they were in a reasonable state of repair. On the basis of the evidence provided it appears that with the unauthorised uses that were occurring few of the glasshouses have been in horticultural use in recent years. However, during this time the nursery continued to house part of the National Collection of Haworthia from which plants for sale are cultivated. Therefore whilst other uses on the site have occurred, I find that as a matter of fact and degree the horticultural use of the nursery and related plants sales have not been abandoned.
10. If the sales from the proposed sales area were ancillary to the horticultural use at Hare Hatch Sheeplands Nursery, or *de minimis*, then the proposal would not constitute a material change of use and so could not be inappropriate development. Outside development limits retail development that is ancillary to a primary existing use is supported by policy TB18 of the Wokingham Borough Managing Development Delivery (Local Plan) (WBMDDLDP).
11. Three considerations have been referred to by the parties to determine whether this would be the case: whether the range of products proposed sold would be ancillary; the size of the sales floor area in relation to the horticultural area; and, the proportion of sales made up of imported products.
12. In relation to the first, the range of products that would be sold includes fencing, garden arts, ornaments, solar lighting, stones, aggregates and items for bird, bee and wildlife care. This goes beyond what can reasonably be considered to be ancillary to horticultural use which typically includes items such as growing media, bulbs, containers, fertilisers and chemicals.
13. Turning to the second consideration, I saw during my site visit that a significant amount of the 8,141sqm of glasshouses will be in horticultural use this year, as will a material part of the outdoor growing area. On this basis the proposed sales area of 499sqm represents a small area of the indoor and outdoor space devoted to horticultural use.

14. In relation to the third consideration, the appellant has produced turnover figures for the last two years and a projection for 2019. The projection for this year is that with the new sales area and increased sales of nursery plants turnover for the nursery would be 59% higher than without the sales area.
15. It is not possible to accurately determine how much of this increase would be due to items sold from the proposed sales area and how much would be due to the increased propagation and growing on of plants within the nursery. Although the level of activity in the greenhouses is increasing I saw that this is from a low base. In my judgement, on the balance of probabilities, the sale of products from the sales area would account for materially more than 20% of the nursery turnover. Such a level of sales could not reasonably be considered to be *de minimis*.
16. I have found that the range of products that would be sold from the proposed sales area would not be ancillary to the horticultural use, and that whilst the sales area would be relatively small, the scale of sales would not be *de minimis*. As a result, the proposed sales area would constitute a material change of use, and thus development, and would not comply with policy TB18 of the WBMDDLDP. The proposal therefore falls to be assessed against planning policy in relation to new development in the Green Belt.
17. Paragraph 146 of the Framework states that certain forms of development in the Green Belt are not inappropriate. These include the re-use of buildings of permanent and substantial construction and material changes in the use of land. This is on the proviso that openness is preserved and development does not conflict with the purposes of including land within the Green Belt. In this case, in my view, the most relevant of such purposes set out in the Framework is to assist in safeguarding the countryside from encroachment.
18. Policy CP12 of the Wokingham Borough Core Strategy and policy TB01 of the WBMDDLDP oppose inappropriate development in the Green Belt. In order to define inappropriate development and protect the Green Belt, policy CP12 refers to a previous national policy document and policy TB01 refers to an earlier version of the Framework. However, as both of these documents include the two exceptions described above, for the purposes of this appeal these policies are consistent with the Framework. Having regard to paragraph 213 of the Framework, I therefore attach considerable weight to them.
19. The proposed sales area would mainly be contained within glasshouses. Whilst permanent these buildings, by virtue of the thin aluminium frames and extensive use of glass, are lightweight in nature and are not of substantial construction. With regard to the smaller outdoor element of the sales area, with the items proposed to be sold there would be a slight reduction in openness. If it is as popular as hoped for the sales area would also make the site busier with noticeably more visitors. This would manifest itself in increased car parking associated with visitors, staff employed in the sales area and more deliveries which would also adversely affect openness. However, the temporary three year nature of the permission sought lessens the harm to openness that would be caused.
20. Taking all these matters together, whilst allowing restricted sales for a period of three years would have a limited adverse effect on openness and the erosion of the countryside at this location, it would constitute inappropriate

development. As a result, it would be contrary to policy CP12 of the Core Strategy, policy TB01 of the WBMDDL and the Framework.

Character and appearance

21. The nursery forms part of the loose cluster of buildings and dwellings at Hare Hatch which are focussed around the roads that pass through the settlement. Bounded on two sides by a road side hedge, its large corner plot sits within a wider agricultural landscape of large hedged fields and occasional copses of trees.
22. In views from Bath Road to the north, the small external extent of the outdoor sales area and the products it would contain would not be readily visible over the height of the boundary fence. In those views that would be possible the sales area would be seen against the taller backdrop of the glasshouses. The increased parking and deliveries associated with the sales area though would be more clearly visible in views from the adjacent roads and from within the nursery. However, the urbanising effect that would result would be lessened by the temporary nature of the permission so that the adverse effect caused to the character and appearance of this rural area would be limited.

Other matters

Accessibility

23. Nurseries are of necessity located in rural areas. Moreover, by the nature of what they sell the majority of customers have to travel by car in order to take home the plants and related items they have bought. Therefore whilst policy CP6 of the Core Strategy supports granting planning permission where a choice of sustainable transport options is available, given the nature of a horticultural nursery, such provision is not appropriate in this instance.
24. Reference has been made to policy CP11 of the Core Strategy which relates to development outside development limits. However, as the wording of this policy does not include reference to accessibility or transportation it is not relevant to this matter.

Future intentions of the appellant

25. Given the history of enforcement at Hare Hatch Sheeplands, the Council is concerned that if the appeal is allowed further applications will be made to expand retail sales. However, each application is assessed on its merits and as allowing this appeal was influenced by the importance of the sale of a restricted range of products to the viability of the horticultural business such circumstances are unlikely to apply to proposals for wider retail use. As a result, granting temporary permission for the development would not set a precedent for future widespread retail use at Hare Hatch Sheeplands.
26. Concern has also been expressed that the appellant would apply for a permission without a time constraint if temporary permission for the development is granted. If this did occur though the planning balance would be altered as the harm caused to openness and the character and appearance of the area would be increased. As a consequence, it does not necessarily follow that permission would be granted.

Other considerations

27. As I have found that the proposed sales area would be inappropriate development in the Green Belt it should not be approved except in very special

circumstances. It is therefore necessary to consider the grounds put forward by the appellant, to determine whether there are any material considerations which would amount to very special circumstances that would outweigh the harm by reason of inappropriateness, and the harm that I have identified to the character and appearance of the area.

Customers' expectations, re-building of the nursery

28. The nature of the horticultural business has changed in the last decade with the wholesale market dominated by very large nurseries and imports. As a result, the majority of smaller traditional nurseries, such as Hare Hatch Sheeplands Nursery, now only sell direct to the public.
29. Customers visiting a nursery expect to be able to buy related products. Whilst the range of products proposed for sale goes beyond that which I have found to be ancillary, it would help the nursery compete with other nearby businesses that also sell plants. On the basis of the submitted financial information, it is apparent that a sales area selling these items would help safeguard the existence of the nursery and help the business grow by increasing turnover and profitability.
30. Such development is supported by policy CP11 of the Core Strategy which supports proposals that contribute to diverse and sustainable rural enterprises. Furthermore, paragraph 83 of the Framework advises that decisions should enable the development and diversification of agricultural and other land based rural activities. This is a matter therefore to which I attach significant weight in favour of the proposal.

Popularity and value to the community

31. The appellant has operated the nursery since before the turn of the century and has improved the appearance of the site, which at the time the company took it over was in a rundown condition. A considerable number of letters in support of the appeal and the business have been sent in, including from the local Member of Parliament. There have been no letters of objection. It is clear from the letters received, and from those who spoke at the hearing, that the nursery is a popular, highly appreciated small independent business that is much valued by the local community. As the proposed sales area would help the nursery to survive and develop, I attach notable weight in favour of the proposed development to the public support for the appeal and the value placed on the business by the local community.

Employment

32. At the time of the application in November 2017 there were eighteen full time equivalent staff employed at Hare Hatch Sheeplands. The current situation is that there are now ten full time equivalent staff employed in addition to the owner, his partner and the finance director. The sales area would generate employment for three full time jobs. It would also help secure the employment of those people within the existing staff currently working within the nursery.
33. The nursery business also has a track record of providing employment opportunities to young people. Working with local schools it has provided the foundation for the future careers of students in horticulture.
34. Therefore, whilst there is high employment in the area and the lowest ever rate of unemployment nationally, I attach noteworthy weight to the employment

benefits, including in relation to young people, that the proposal would help to secure.

Conclusion

35. The sale of the range of products proposed by the appellant would not be ancillary to the horticultural use or *de minimis* and the re-use of the glass house and outdoor area for this purpose would constitute inappropriate development. By definition, inappropriate development would be harmful to the Green Belt as described in paragraph 143 of the Framework.
36. The harm by reason of inappropriateness in relation to the appeal scheme is added to by the limited harm that would occur to the character and appearance of the area. In accordance with paragraph 144 of the Framework, I attach substantial weight to the harm that would be caused to the Green Belt and the associated harm that would be caused to the character and appearance of the area.
37. However, I find that, cumulatively, the other considerations put forward by the appellant are considerable and, in this case, clearly outweigh the harm to the Green Belt by reason of inappropriateness and the harm to the character and appearance of the area. As a result, the very special circumstances necessary to justify the development exist in compliance with paragraph 143 of the Framework.
38. Reference has been made by the local planning authority to a number of appeal decisions including in relation to Hare Hatch Sheeplands and nearby garden centres. All but one of these appeals were dismissed. However, equally I have been referred to other similar appeal decisions by the appellant which were allowed. It is an established principle that each case is assessed on its merits. The Inspectors in the appeals referred to exercised their judgement on the basis of circumstances of the appeals and the evidence before them, as have I in relation to this appeal. As a consequence, reference to these decisions has not altered my conclusion in relation to this appeal.

Conditions

39. In the interests of certainty, I have imposed a condition specifying the relevant drawings and documents that the development is to be carried out in accordance with.
40. Permission is sought for a temporary period of time to allow the horticultural business to grow and allow sufficient time to review with the Council the requirements for the business and future plans for the wider site. As the local planning authority notes, it would also provide an opportunity to assess the effect of the use on the Green Belt and countryside. The Council refers to use of a planning obligation to ensure that the retail use ceases after three years. However, as the Framework notes, obligations should only be used where it is not possible to secure compliance through the use of a condition. This is not the case here.
41. The appellant's view is that the Council has been uncooperative and intransigent in its approach towards development at Hare Hatch Sheeplands. As a result, a longer period than the three years applied for is now sought. In my judgement however, a three year permission from the date of this decision provides an adequate time period to achieve the appellant's stated aims.

42. In order ensure that the items sold are related to and support the horticultural use, the type of goods that can be sold need to be restricted to those that formed part of the application. To check compliance, visits from time to time will need to be carried out by the Council. Whilst the Council's resources may be limited such checks would be straight forward to carry out and a breach easy to detect. Consequently, I do not consider such a condition would be unenforceable.
43. I have required all these matters by condition, revising, where necessary, those suggested by the Council to reflect the advice contained within Planning Practice Guidance.

Ian Radcliffe

Inspector

APPEARANCES

FOR THE APPELLANT:

Miss Jones	Barton Willmore
Mr Scott	Owner

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Head	Wokingham Borough Council
Mr Gardner	On behalf of Wokingham Borough Council
Mr Headley	Wokingham Borough Council

INTERESTED PERSONS:

Mr Heather	local resident
Mr Moore	local resident
Mr A'Bear	local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Appeal Decision ref APP/R0660/X/09/2115961
- 2 Wokingham Borough Council's analysis of Hare Hatch Sheeplands financial information

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