
Appeal Decision

Site visit made on 20 November 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 28th November 2017

Appeal Ref: APP/Y3615/W/17/3181618

Land to the rear of Kirkwood, The Jays and Bramfield, Ockham Road North, East Horsley KT24 6NU

- 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 and Mrs Porter, Gross and Guest against the decision of Guildford Borough Council.
 - The application Ref 16/P/02495, dated 13 December 2016, was refused by notice dated 9 February 2017.
 - The development proposed is the creation of a new access and erection of 4 detached 2 storey dwellings on land to the rear of the existing dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I am advised that the Council's draft Local Plan is yet to be submitted for examination and therefore I consider it carries very limited weight in this appeal, having regard to paragraph 216 of the National Planning Policy Framework (the Framework). The saved policies of the adopted Guildford Borough Local Plan 2003 (GBLP) pre-date the Framework. I have therefore ascribed weight to relevant saved policies for the purposes of this appeal in my reasoning below, having regard to paragraph 215. I am also advised by the Council that a Neighbourhood Development Plan is being prepared, which is also yet to be examined and so attracts very limited weight, but anyway does not propose amendments to the Green Belt or identify the appeal site for development.

Main Issues

3. The main issues are:
 - i. Whether the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - ii. The effect on the openness of the Green Belt and the purposes of including land within it;
 - iii. The effect on the Thames Basin Heaths Special Protection Area (TBHSPA); and
 - iv. If the development would be inappropriate, 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 it.

Reasons

Whether the proposal would be inappropriate development

4. The proposal is to erect 4 two-storey detached houses on land to the rear of the host properties, which currently serves as large gardens to those properties. The host properties form part of an essentially linear area of residential development along this part of Ockham Road North. Paragraph 89 of the Framework sets out the categories of development which may be regarded as not inappropriate in the Green Belt, subject to certain criteria. New buildings within the Green Belt are inappropriate development unless, amongst other things not relevant in this case, they represent limited infilling in villages. The Framework does not make particular provision for small scale housing developments in villages, other than by way of limited infilling.
5. The site lies within the identified settlement boundary of the village of East Horsley, which is 'washed over' by the Green Belt as set out in saved Policy RE2 of the GBLP. The washed over concept was not carried forward in the Framework and therefore Policy RE2 is not entirely consistent with it. However, the site remains within the designated Green Belt where Policy RE2 allows for infilling in villages and to this extent the policy is generally consistent with paragraph 89.
6. Saved Policy RE3 of the GBLP states that within the specified settlement boundaries new building will be permitted in the nature of infilling on land substantially surrounded by existing development, for purposes including the development of small frontage gaps and small scale housing developments. 'Limited infilling' is not defined in the Framework but in my experience it is generally considered to relate to development in a small gap in an otherwise built up frontage. While Policy RE3 significantly pre-dates the Framework and is also not fully consistent with it, I see no reason to disagree with my colleague¹ that its additional requirement, beyond that of paragraph 89, that infilling should be on land substantially surrounded by existing development does not amount to any significant inconsistency with the Framework.
7. The four dwellings proposed might reasonably be considered a small scale housing development, but the development would not constitute the development of a small frontage gap as it would be a backland form of development situated at behind the host dwellings. Moreover, the site is generally surrounded at the rear and on one side by woodland, and on the other side by gardens. I note that there are dwellings in The Highlands beyond the woodland to the side, of which slight glimpses can be seen from the site through the trees. However, in my view, The Highlands does not surround the site, being clearly separated from it by the wooded area that is essentially free from built form. Therefore, the only significant extent of existing built development surrounding the site is the row of houses fronting Ockham Road North.
8. I therefore consider that the site is generally free from existing built development on three sides and that the existence of built development at the

¹ In appeal Ref APP/Y3615/W/16/3150853

front of the site does not result in it being substantially surrounded by existing development. I am therefore not persuaded that the proposal represents limited infilling in a village in the context of the Framework and in regard to the requirements of Policy RE3. The proposal would therefore be contrary to paragraph 89 of the Framework and saved Policies RE2 and RE3 of the GBLP. Insofar as the relevant requirements of the development plan policies are generally consistent with national policy, I afford them significant weight in this appeal.

9. I therefore conclude on the first main issue that the proposal would be inappropriate development in the Green Belt, which paragraph 87 of the Framework states is harmful by definition and should not be approved except in very special circumstances.

Openness

10. Paragraph 79 of the Framework sets out that openness is a fundamental characteristic of Green Belts, and this relates largely to freedom from built development. Whilst the proposed dwellings would not be visually prominent, as they would be well set back from the road behind residential properties, the proposal would clearly introduce a significant amount of additional built form to this part of the village, due to the scale, mass and height of the proposed dwellings.
11. I saw that the site is currently used principally as residential gardens and includes a number of associated outbuildings and other minor items. However, the proposal would have a significantly greater impact on the openness of the Green Belt in spatial and visual terms. The existing very large rear gardens have a generally more open appearance that is visibly different to the built development along Ockham Road North. As such, the appeal site makes a contribution to the openness of the Green Belt here, where the built form of the village gives way to the generally open, albeit wooded, land beyond. The development would therefore have a more urbanising effect than the existing use of the site and as a result would not aid the transition to the countryside beyond.
12. I therefore conclude on the second main issue that there would be a material reduction in the openness of this part of the Green Belt.

Special Protection Area

13. The site lies within the 5km zone of influence around the TBHSPA, a European designated site, where saved Policies NE1 and NE4 of the GBLP essentially set out that proposals that would directly or indirectly adversely affect the nature conservation value or protected species will not be granted. Within the 5km zone, it is established that any development resulting in a net increase in the number of dwellings, without avoidance measures, would be likely to have a significant effect on the TBHSPA within the meaning of the Conservation of Habitats and Species Regulations 2010. The Council's adopted TBHSPA Avoidance Strategy Supplementary Planning Document 2017 sets out the approach to mitigating residential development by way of contributions towards access management and monitoring (AMM) and Suitable Alternative Natural Green Space (SANGS). The appellant has provided a signed, dated and executed Section 106 Agreement to the appeal which makes provision for financial contributions of £29,444.44 for SANGS and £3486.24 for AMM.

14. I have considered the Agreement in relation to the tests set out in CIL Regulations 122 and 123 and Paragraph 204 of the Framework. The contributions relate to the upgrading and maintenance of existing SANGS, rather than the provision of a new SANGS. The contributions would be reasonably related in scale and kind to the development. The Council is satisfied with the content of the Agreement, to which it is party and which it considers to address its second reason for refusal. On the evidence before me, I see no reason to disagree. I am therefore satisfied that the Agreement meets the relevant tests and that it provides sufficient mitigation, by way of contributions, to satisfy the requirements of Policies NE1 and NE4 of the GBLP and the adopted Avoidance Strategy 2017. Accordingly, I am satisfied that the development would not affect the overall integrity of the TBHSPA.

Other Considerations

15. The Council is currently unable to demonstrate a 5 year supply of housing land. In such circumstances, the Framework states that relevant policies for the supply of housing should not be considered up-to-date. I return to this matter in my conclusion below.
16. I note the appellants' view that the emerging development plan includes the release of Green Belt and shows East Horsley inset from the Green Belt. There is very limited information before me in this regard. Nevertheless, the emerging plan is at a relatively early stage of preparation and so does not attract any significant weight in this appeal. I have considered the various legal opinions and planning decisions relating to Green Belt schemes in the general area. However, the specific circumstances and site context of each case differs materially from the case before me, including planning permission 17/P/00680 where the proposed position and layout, and the surrounding development pattern all differ. I am also advised by the Council that the existing site in that case included large outbuildings.
17. The Council has not raised concerns, subject to planning conditions, to various other matters including with regard to the general character and appearance of the area, highway safety, and ecology. On the evidence before me I see no reason to take a different view to the Council, but these are essentially neutral considerations that do not affect the overall balance. I also accept the appellants' view that the proposal would not result in encroachment beyond the settlement boundary and there is nothing before me to significantly counter that a local housing needs survey in 2016 identified that developments should be focused on small-scale schemes of 10 units or less. While the proposal would be generally small-scale, this does not overcome my findings above in relation to national and local planning policy.

Conclusion

18. The development would be inappropriate development in the Green Belt. This would, by definition, cause harm, and means that the proposal should not be approved unless there are very special circumstances. Furthermore, the proposal would cause harm to the openness of the Green Belt. The government attaches great importance to Green Belts and the Framework is clear that substantial weight should be given to any harm to the Green Belt. The totality of the harm identified in this case therefore weighs heavily against the proposal. 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.

19. The Council accepts that it cannot currently demonstrate a five-year supply of deliverable land for housing. As at June 2017 its land supply was around 2.36 years. A significant shortfall such as this is a matter to which I attach considerable weight. The provision of the four additional houses proposed, in a location generally accessible to a range of services, would make a modest contribution to supply and bring about modest social and economic benefits, and this carries moderate positive weight.
20. However, even taken with the other suggested benefits this does not, individually or cumulatively, clearly outweigh the harm to the Green Belt in this case. Consequently, very special circumstances do not exist. In reaching this view, I have taken into account the Planning Practice Guidance which states that, 'Unmet housing need is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt'².
21. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date if the Council is unable to demonstrate a five-year supply of deliverable housing sites. Paragraph 14 of the Framework is therefore engaged, which advocates the presumption in favour of sustainable development. However, paragraph 14 footnote 9 indicates that in these circumstances development restrictions relating to land designated as Green Belt remain in effect. The presumption in favour of sustainable development therefore does not apply in this case. Given that there are not the very special circumstances to justify the proposal in this case, Green Belt policy is determinative.
22. I have not identified harm in relation to the TBHSPA. Nonetheless, for the reasons given above and taking all other matters into account, I conclude that the development would not accord with the Green Belt protection aims of the Framework and the development plan as a whole. As material considerations do not indicate that this case should be determined other than in accordance with the development plan and the Framework, the appeal is dismissed.

Catherine Jack

INSPECTOR

² Ref ID 3-034-20141006