
Appeal Decision

Site visit made on 8 March 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2021

Appeal Ref: APP/C3620/W/20/3257242

The Warren, Oxshott Road, Leatherhead KT22 0EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Adrian Sykes of Skye Property Group Limited against the decision of Mole Valley District Council.
 - The application Ref MO/2020/0859/OUT, dated 24 May 2020, was refused by notice dated 28 July 2020.
 - The development proposed is Rural Exception Affordable Housing Development consisting of three apartments and a self-build basement dwelling.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Adrian Sykes of Skye Property Group Limited against Mole Valley District Council. This application is the subject of a separate decision.

Procedural Matters

3. The description of development above is taken from the application form. The Council has amended the wording on the decision notice by omitting reference to 'rural exception affordable housing development'.
4. The application is made in outline with details of access, layout and scale provided for consideration. Appearance and landscaping are reserved matters. I have treated the plans as being determinative as to the scale and layout of the proposed development but illustrative in terms of the building design.
5. Revised plans have been submitted for consideration during the appeal process. These show an altered staircase arrangement which creates a different building footprint and thus site layout. The plans have not been the subject of any public consultation and therefore, to avoid prejudicing interested parties, my decision is made against the plans which formed the basis for the Council's decision.

Main Issues

6. The main issues are:
 - a) whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework);

- b) whether the proposal would be sustainable development with regard to the site's location;
- c) the effect on the character and appearance of the area;
- d) whether the proposal would create a satisfactory living environment for future occupiers of the basement dwelling;
- e) the effect on the living conditions of the occupiers of The Warren; and
- f) 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 the very special circumstances necessary to justify the development.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

7. The site is located in the Metropolitan Green Belt. The Framework explains that inappropriate development should not be approved within the Green Belt except in very special circumstances. The construction of new buildings is regarded as inappropriate but paragraph 145 of the Framework sets out various exceptions. Criterion f) relates to limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites). Criterion g) relates to limited infilling or the partial or complete redevelopment of previously developed land which would (i) not have a greater impact on the openness of the Green Belt than the existing development; or (ii) not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the Council's administrative area.
8. It is explicit within the Framework that in order to qualify as an exception under criterion f) a proposal must comply with development plan policy on affordable housing. Policy CS4 of the Mole Valley Core Strategy (2009) (MVCS) is relevant. Amongst other things, this states that small scale affordable housing schemes may be acceptable on an exceptional basis on sites outside of, but adjoining the settlement boundaries of the rural villages. The policy expectation is that 'rural exception sites' would comprise 100% affordable housing. However, I note that more recent national policy¹ does give the local planning authority discretion to permit a proportion of market homes, for example where essential to enable the delivery of affordable units without grant funding.
9. The site lies on the outskirts of Leatherhead which is one of the District's main towns. It does not adjoin the settlement boundary of any of the rural villages listed in MVCS Policy CS2 as being appropriate for rural exception schemes. Therefore, it does not qualify as a rural exception scheme under development plan policy. I have not been directed to any other policies that would support the development of affordable housing in this particular location. That being the case, criterion f) of Framework paragraph 145 cannot apply.
10. It is argued in the alternative that the proposal would be acceptable on the basis that it lies within the curtilage of developed land and therefore constitutes previously developed land (PDL). Although the Framework excludes residential

¹ Definition of 'rural exception sites' within Annex 2 of the Framework

gardens from the definition of PDL², residential gardens which are not in 'built-up areas' are not excluded from the definition³. The appeal site lies outside of the defined built-up area in the development plan. Notwithstanding the site's proximity to other houses and the M25 motorway, the local environs are heavily treed and semi-rural in appearance. Having regard to the Framework definition and relevant caselaw, I consider that the site would constitute PDL.

11. Identifying the site as PDL is the only first step in applying criterion g) of paragraph 145. It is also necessary to make an assessment of the effect on openness. Openness is an essential characteristic of the Green Belt. The site is fenced but is presently free of permanent structures. It has a pleasant open aspect when viewed from the private road serving the adjacent row of dwellings, and from the public footpath which runs along the southern site boundary.
12. The submitted elevations are only illustrative, but they demonstrate the scale of the development. The building would have a height in excess of 10 m and a footprint of roughly 93 m², excluding the stairwell. There would be a basement and 3 floors above ground, the upper storey being contained in the roof space. Appearance is a reserved matter and therefore the detailed architecture could be different to that shown. Nevertheless, there can be no doubt that this would read as a building of significant scale and bulk. The development would have a greater impact on the openness of the Green Belt than the existing site and moreover it would cause substantial harm to the openness of the Green Belt in this location. Therefore, irrespective of the proposal for affordable housing, the scheme does not fall within either limb of criterion g).
13. Accordingly, I conclude that the scheme would be inappropriate development which the Framework states is, by definition, harmful to the Green Belt.

Location of development

14. The Council's officer report contains extracts from previous appeal decisions⁴ in which the suitability of the location was considered. There has been no change of development plan policy since those decisions were issued. The Inspectors refer to the fact that the site lies outside of the designated settlement boundary and at the lower end of the hierarchy for new development as set out within MVCS Policy CS1. The decisions note the distance of the site to local facilities, including a supermarket, and the proximity of bus stops. However, both Inspectors conclude that although some journeys could be made by alternative means of transport, occupiers of the proposed dwellings would rely heavily on the private car for many aspects of day to day living. The 2014 decision went so far as to conclude that the site is not in a sustainable location for new housing.
15. Previous appeal decisions are an important material consideration. Given that the circumstances are largely unchanged since those decisions were issued, I have no reason to depart from the Inspectors' findings. Whilst I accept that the site is not an isolated home in the countryside for the purposes of Framework paragraph 79, the location and accessibility credentials are contrary to the sustainability aims of MVCS Policy CS1. This weighs against the proposal.

² Definition of 'previously developed land' within Annex 2 of the Framework

³ See judgment of *Dartford BC v SSCLG* [2017] EWCA Civ 141

⁴ APP/C3620/W/16/3152540 & APP/C3620/A/14/2215168

Character and appearance

16. The site lies at the southern end of a line of detached houses. The properties are individually designed but there is some harmony arising from the two storey scale and hipped roofs. The houses are staggered but there is a consistent building line which gives a sense of coherence to the street frontage.
17. The proposed apartment block would be set behind the prevailing building line and as such it would not be unduly prominent in views along the street from the north. However, the structure would have a deeper footprint compared to the existing houses in the row and its roof mass would be greater due to the need to accommodate an apartment within the roof. The stairwell would be an alien feature and the angled orientation of the building would be at odds with the established rhythm of development in the locality. The site frontage would be dominated by hard surfacing, with negligible room for planting to mitigate the visual impact of parked cars.
18. The development would be not so much cramped as out of character. Clearly there is some scope to design the scheme differently, but the layout and scale are fixed under the outline application. The proposed building would be a discordant feature and it would urbanise this undeveloped parcel of land and intrude into the pleasant views of trees on the M25 motorway embankment. For this reason, I conclude that it would be materially harmful to the character and appearance of the area, contrary to Policy CS14 of the MVCS and Policies ENV22, ENV23 and ENV24 of the Mole Valley Local Plan (2000) (MVLPL). These policies are consistent with the Framework in seeking to ensure that new development is sympathetic to local character.

Living environment within the proposed basement dwelling

19. The Council has raised concerns regarding the quality of the living environment within the basement dwelling. The planning application does not include any site sections but it is clear from the layout that the basement would be provided with a courtyard, together with access to an area of garden. These areas would be adequately sized to serve the occupiers' outdoor recreational needs.
20. Although the apartment itself would have full height glazed openings onto the courtyard, this area would be below the natural ground level and within metres of the boundary with The Warren. The proximity to retaining structures and the flank wall of The Warren would be oppressive and the northern aspect means that the area would be in permanent shade. The outlook from the apartment would be poor and moreover there is no substantive technical evidence to demonstrate that the internal rooms would receive adequate levels of daylight.
21. Based on the plans and the information presented, I do not consider that future occupiers of the basement dwelling would enjoy acceptable living conditions. The submission of further details at the reserved matters stage would provide limited opportunity to remedy any issues which are largely related to layout. There would be conflict with MVLPL Policy ENV22 insofar as this requires proposals to provide a design and layout which provides a satisfactory environment for occupiers of the new development.

Effect on the living conditions of the occupiers of The Warren

22. It is contended the proposed building would be visually prominent and overbearing for the residents of The Warren which adjoins the site. Although

the proposed apartment building would be sited at an angle to the boundary it would align with the flank wall of its detached neighbour. This would ensure that the proposal is not materially harmful to the living conditions of the neighbours. There would be no policy conflict in this regard.

Other considerations

23. The Council concedes that it is unable to demonstrate a five year supply of deliverable housing sites. According to the officer report the current supply is 3 years. Paragraph 11 (d) of the Framework states that in circumstances such as this, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or 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. Footnote 6 identifies Green Belt policy as applying to the first limb of paragraph 11 (d). Application of paragraph 11 (d) is staged, so that if the first limb is infringed, there is no requirement to undertake the 'tilted balance' in the second limb.
24. The proposal would contribute to the supply of new homes in the District. Given the scale of the housing supply shortfall and the priority within the Framework to significantly boost the supply of homes, the benefits of housing delivery carry considerable weight. The absence of a five year land supply reduces the weight I have attached to the conflicts with the spatial strategy set out in MVCS Policies CS1 and CS2. Nonetheless, the benefits arising from the net addition of 4 new dwellings would be very modest and tempered by my conclusions in respect of the sustainability of the site location.
25. The Council's Supplementary Planning Document 'Affordable Housing: A Guide for Applicants on Core Strategy Policy CS4' (SPD) stipulates that for permission to be granted for a rural exception site, a local needs survey must have been carried out, which shows clearly that there is a local need for the type and number of proposed dwellings at the estimated out-turn prices or rents. The application is not accompanied by any substantive evidence to demonstrate a local community need for the affordable units being proposed, in line with the requirements of the SPD and paragraphs 77 and 145 (f) of the Framework.
26. Instead, the scheme is being promoted on the basis that it would contribute to the 'insurmountable' need for affordable homes across the District and the wider region. The Council does not appear to dispute that there is significant requirement for affordable housing; this is well documented. The scheme would deliver 3 affordable homes, with a registered provider already having expressed an interest in acquiring 2 units for shared ownership. The appellant is proposing that the third unit be an affordable self-build unit, although I note that they would also accept shared ownership tenure.
27. There is no s106 planning obligation to secure the delivery of the affordable element of the scheme. The SPD explains that this is the Council's normal practice and in my opinion this is reasonable expectation. A planning condition would not provide the necessary certainty, particularly in view of the lack of any agreement between the parties on tenure split. In the absence of any reliable mechanism to secure the affordable housing I have not attached the benefits of affordable housing delivery any significant weight.

28. Given that the open market unit would be located in the basement of a building which is to be used as affordable housing it is unclear how the mechanics of self-build would operate. This is not explained within the documentation. Framework paragraph 77 does give the Council discretion to allow some market housing on sites where it would facilitate the affordable element. A viability statement is provided within the appeal particulars but this is rudimentary and lacking in detail, and it does not robustly demonstrate that the market home is essential to deliver the affordable units.
29. The proposal would provide a stimulus to the construction sector during the build phase, and spending by future occupiers would support shops and businesses in Leatherhead. However, the economic benefits of a development on this limited scale would be very modest.

Other Matters

30. The officer report refers to the site as a noisy location which is not ideal to promote health and wellbeing. However, I note that the Environmental Health Officer has advised that protection from traffic noise on the M25 can be secured through a pre-commencement condition which requires the acoustic environment to be assessed and suitable mitigation provided. Having regard to this expert consultee advice, I am content that the matter can be addressed by condition.

Green Belt Balance and Conclusion

31. The proposal would be inappropriate development in the Green Belt and it would cause substantial harm to the openness of the Green Belt. Harm would also arise from the site's location, the adverse impact on the character and appearance of the area and the sub-standard living conditions for the occupiers of the basement dwelling. Cumulatively, the non-Green Belt harms would be significant.
32. The Framework states that substantial weight will be given to any identified harm to the Green Belt, and that 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.
33. I have had regard to the scheme's benefits, particularly in terms of housing delivery, but they do not clearly outweigh the harm I have identified. As a result, the very special circumstances necessary to justify inappropriate development in the Green Belt have not been demonstrated and the scheme would conflict with national policy. This provides a clear reason for refusing planning permission and therefore the tilted balance set out within Framework paragraph 11 (d) (ii) is not engaged. The adverse impacts are so significant that the same conclusion would have been reached, even in the scenario where a suitable mechanism had been agreed to secure the affordable housing.
34. The proposal would conflict with the development plan taken as a whole and there are no material considerations to indicate a decision otherwise than in accordance with the development plan. For the above reasons, and having taken all matters into account, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR