



Appeal Decisions

Site Visit made on 23 August 2021

by **S Harley BSc(Hons) M.Phil MRTPI ARICS**

an Inspector appointed by the Secretary of State

Decision date: 09 September 2021

Appeal A3 Ref: APP/L3625/W/21/3269742

Land at Horseshoe Lodge, Brighton Road, Kingswood, KT20 6QZ

- 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 Danshe Ltd against the decision of Reigate and Banstead Borough Council.
 - The application Ref 20/01466/F, dated 10 July 2020, was refused by notice dated 15 January 2021.
 - The development proposed is erection of a terrace comprising three two-storey 2 bedroom houses with off-street parking.
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Appeal B4 Ref: APP/L3625/W/21/3269688

Brighton Road, Kingswood, KT20 6QZ

- 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 Danshe Ltd against the decision of Reigate and Banstead Borough Council.
 - The application Ref 20/01465/F, dated 10 July 2020, was refused by notice dated 15 January 2021.
 - The development proposed is erection of 4 two-storey houses in two blocks with off-street parking.
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Appeal C5 Ref: APP/L3625/W/21/3267544

Land at Horseshoe Lodge, Brighton Road, Kingsdown, KT20 6QZ

- 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 Danshe Ltd against the decision of Reigate and Banstead Borough Council.
 - The application Ref 20/01464/F, dated 10 July 2020, was refused by notice dated 15 January 2021.
 - The development proposed is erection of 5 two-storey houses, comprising 2 pairs of semi-detached houses, together with a detached 3/4 bedroom house, all with off-street parking.
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Decision

1. Appeal A3, appeal B4 and appeal C5 are dismissed.

Preliminary Matters

2. As set out above there are three alternative appeals on the land around and between Horseshoe Lodge (the Lodge), a Grade II Listed Building, and Horseshoe Terrace, a row of three dwellings allowed at appeal in 2017¹. I have considered each proposal on its individual merits. However, to avoid duplication

¹ APP/L3625/W/17/3171240

I have dealt with the three schemes together, except where otherwise indicated.

3. On 20 July 2021 the revised National Planning Policy Framework (the 2021 Framework) came into effect. The Parties have had the opportunity to consider the implications of this. I have taken the comments received into account.

Main Issues

4. For all three appeals these relate to:
 - whether the proposals would be inappropriate development in the Green Belt;
 - the effect on the character and appearance of the area;
 - the effect on the setting of the Lodge;
 - whether satisfactory access to the site has been demonstrated;
 - whether the effect of the proposals on protected species/habitats has been satisfactorily addressed;
 - in addition, for appeals B4 and C5, whether appropriate living conditions would be provided for future occupiers of the houses proposed at Plots one and two, taking particular account of outlook and light; and
 - in addition, for appeal C5, the effect on a protected tree.
5. If the development is inappropriate, a further main issue relates to whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify each proposal.

Reasons

Whether inappropriate development

6. The appeal site is within the Metropolitan Green Belt. The fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open: the essential characteristics of Green Belts being their openness and permanence. Paragraph 149 of the 2021 Framework treats the construction of new buildings as inappropriate development with some exceptions.
7. The Glossary at Annex 2 of the Framework defines previously developed land (PDL) as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed). Moreover, land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape are excluded from the definition of PDL.
8. In 2017, a colleague Inspector concluded the site, together with the site of the now Horseshoe Terrace, to be PDL primarily because of the buildings that existed on it. At that time removing dispersed buildings; the provision of one building of smaller footprint and similar volume; and landscaping the area outside the curtilage of Horseshoe Terrace as communal garden; taken together, was considered not to conflict with the purposes of including land in

the Green Belt. Although there is now some evidence of hardcore standing in places, parts of the current appeal site have now blended into the landscape and no longer qualify as PDL. Accordingly the 2017 decision does not set a precedent for this appeal.

9. Even though parts of the site might qualify as PDL, for all three proposals, the construction of relatively large buildings where there are none would significantly reduce the visual and spatial openness of the Green Belt. I saw a commercial container and two smaller, shed style, structures on the site. The planning status of these is not demonstrated by the evidence but condition 4 of the 2017 appeal decision intended that all buildings be cleared from the site so I give their presence little weight in this appeal.
10. The proposals would have a greater impact on the openness of the Green Belt than existing development and it is not proposed that any of the schemes are intended to meet an identified affordable housing need. Therefore the exception at Paragraph 149 e) does not apply to any of the proposals. Nor do any of the other stated exceptions. I conclude that each of the proposals would amount to inappropriate development in the Green Belt. Accordingly there would be conflict with Policy CS3 of the Reigate and Banstead Core Strategy 2014 (the CS); Policy NHE5 of the Reigate and Banstead Development Management Plan 2019 (the DMP) and those principles of the 2021 Framework that seek to restrict inappropriate development in the Green Belt unless very special circumstances clearly outweigh the potential harm to the Green Belt (see below).

Character and appearance

11. There is no objection to the appearance of any of the proposed houses, which would be of traditional design and materials and broadly similar to Horseshoe Terrace. The site is in open countryside. Following the 2017 decision the appeal site was intended to be a communal garden area for Clock Tower Mews. The site is fenced and so overgrown that it would not be attractive for recreational or community use. I see no reason to suppose it would not be attractive for use by local residents if appropriate access were available and if suitable landscaping and maintenance took place.
12. The block of three houses at appeal A3 would replicate Horseshoe Terrace and would be sited between it and the Lodge. It would have parking spaces in front of the proposed houses. A large area of open space adjoining the Lodge and extending the full length of the southern boundary of the site would be retained although this would be tucked behind houses. This could be landscaped and provide open space for the benefit of local residents. I conclude that although there would be some harm due to loss of open countryside the appeal A3 proposals would have an acceptable effect on the character and appearance of the area.
13. Appeal B4 is for two pairs of semi-detached houses. One of the pairs would be in a similar position to two of the houses proposed under Appeal A3. Access to the second pair, which would be set behind the first pair, would be adjacent to the rear boundary of the Lodge. with a smaller area of open space between the Lodge and the southern boundary. Appeal C5 is for two pairs of semi-detached houses, in the same positions as those proposed for appeal B4, plus a detached house between the Lodge and the southern boundary.

14. The dispersal of buildings across the site would have an urbanising effect and be harmful to the openness of the countryside. The open space at appeal B4 would be much smaller and less attractive to use being confined to the lower area next to the A217 and over shadowed by boundary planting and the protected tree. There would be no useable open space at appeal C5.
15. For the above reasons I conclude that the appeal B4 and C5 proposals would have a harmful effect on the character and appearance of the area and would be harmful by the loss of open recreational/community land. Accordingly there would be conflict with Policies DES1 and DES5(6) of the DMP that together require development to make a positive contribution to the character and appearance of its surroundings and seek adequate provision of outdoor amenity space. Given the site is relatively well enclosed and as the recreational/community land has not yet been provided I give these matters modest weight in these cases.

The Lodge

16. The appeal site wraps around the garden of the Lodge. The importance of the Lodge lies in its age, as an early 19th century whitewashed two storey house, and it's largely unchanged external appearance with a hipped slate roof, end stacks, a catslide roof and a dentil band over the first floor.
17. The building itself would not be directly affected by any of the proposals but it can be seen above the fences and above and between vegetation. Due to the intervisibility between them the appeal site forms part of the setting in which the Lodge can be appreciated. The remainder of its setting comprises the hard surfaced access, the side walls and timber framed entrance to Clock Tower Mews and the adjacent dual carriageway.
18. As the site is predominantly open, notwithstanding it is partly over grown, it provides space in which the Lodge can be appreciated. The proposed access and parking areas would help retain some openness around the Lodge for appeals B4 and C5. However, the introduction of larger buildings so close to the walls of the Lodge (some 9m away in the case of appeal A3), and to the south (some 15m away in the case of appeal C5), would have a harmful urbanising effect detracting from the appreciation of the Lodge as an individual building looking both to and from it. There have been buildings closer to the Lodge in the past and I conclude the degree of harm to the setting of the Lodge would be less than substantial.
19. In accordance with the 2021 Framework, such heritage harm should be balanced against the public benefits of the proposal. These would include the boosting of housing and economic benefits from employment during construction and spend in the local economy although due to the scale of the proposals these attract modest weight in the context of this appeal. The proposal would make use of land that is disused and currently somewhat over grown but, as there is the alternative beneficial recreational or community use, poor maintenance attracts little weight in favour of the proposal. On balance I conclude that the public benefits would not outweigh the harm to the setting in which the Lodge is appreciated.
20. For the above reasons I conclude the proposal would have a harmful effect on the setting of the Lodge. There would be conflict with Policy NHE9 of the DMP which seeks to preserve and enhance the settings of listed buildings.

Access

21. Access is shared with Clock Tower Mews, the Lodge and Horseshoe Terrace. The entrance is from a small turning off Brighton Road a short distance uphill from the roundabout with Chipstead Lane. I am advised it was upgraded in 2007 when the former stable buildings were converted to the Clock Tower Mews flats. Drivers leaving the roundabout are accelerating up past the entrance. Vehicles exiting the site must turn left onto this section of Brighton Road which is the busy A217 dual carriageway.
22. There is a close boarded fence along the roadside boundary set behind a narrow verge. At the time of my visit visibility to the oncoming traffic to the right was obstructed by tall vegetation on the verge. Although the entrance itself is reasonably wide the radii are relatively abrupt and this, in combination with the vegetation, means that visibility is poor and the safety of users of the access and highway is at risk. This is already the case for existing users of the access but would be exacerbated by additional turning manoeuvres associated with any additional houses.
23. I have considered whether, if the proposals were otherwise acceptable, this issue could be dealt with by way of condition. However, it is not clear from the submitted plans whether all the land necessary to provide clear uninterrupted visibility towards the roundabout is within the ownership/control of the appellant or within the highway boundary. Consequently it would not be appropriate to seek to resolve this issue by way of condition.
24. In the absence of evidence, such as detailed drawings, to demonstrate otherwise I cannot confidently conclude that satisfactory access to the site for additional development would be provided. There would be conflict with Policy TAP1 of the DMP and those principles of the 2021 Framework that seek safe access for all. As the access exists, I give this moderate weight in this appeal.

Protected species and habitats

25. Vegetation is reclaiming the hardcore areas of the site. Banstead and Walton Heath Site of Nature Conservation Importance and deciduous woodland classified as Habitat of Principal Importance lie adjacent to the site boundaries. There is suitable habitat for protected species in the local area, including bats, badgers, dormice and reptiles. There is therefore the potential for protected species to be present on, or in close proximity, to the site.
26. As there is no detailed ecological information available, I cannot confidently conclude that the proposals would not harm protected species and/or habitats, whether or not domestic gardens would improve biodiversity. There would be conflict with Policy NHE2 of the DMP and those principles of the 2021 Framework that seek to protect and enhance biodiversity. I give this moderate weight in this appeal.

Living Conditions for occupiers of the proposed developments

27. For appeals B4 and C5 the flank wall of the house proposed at Plot three would extend almost the full width of both rear gardens of the houses proposed at Plots one and two. The roof for Plot three would vary between some 6.45m high and 7.1m. Even though set at a slightly lower level, the close proximity of such a high building would be over bearing and obtrusive and would

overshadow the gardens. This would result in a gloomy and oppressive outlook from the rear windows and gardens of the houses at Plots one and two.

28. I conclude that the proposals at appeals B4 and C5 would not provide appropriate living conditions for future occupiers of Plots one and two. Accordingly those proposals would conflict with Policies DES1 and DES5 of the DMP which seeks good living conditions for future occupants. I give this moderate weight in these cases.

Protected tree

29. The 2021 Framework recommends that existing trees are retained wherever possible. The proposal at appeal C5 includes the removal a yew tree which is protected by Tree Preservation Order RE 1179 (TPO). I am told that an Arboriculturist has stated it is "an extremely poor specimen". I observed the tree has some dead branches but, in the absence of more detailed information, I cannot conclude that proper maintenance would not enable it to flourish.
30. The loss of the tree would conflict with Policy NE3 of the DMP which seeks to preserve protected trees unless the need for, and benefits of, development in that location clearly outweigh the loss. In this case the provision of a dwelling would not outweigh the loss of the tree. However, there are many trees in the locality and this one is not particularly prominent. Provided there would be replacement planting I give the loss of the tree relatively little weight.

Other considerations

31. As set out above the proposal would help boost the supply of housing as sought by Government policy. There would be economic benefits from employment during construction and spend in the local economy. However, due to the scale of the proposals these attract modest weight in the context of this appeal. The proposal would make use of land that is disused and currently somewhat overgrown but, as there is the alternative beneficial recreational or community use, poor maintenance attracts little weight in favour of the proposal.

Other Matters

32. The adjacent Clock Tower Mews flats were allowed on appeal in 2007. This conversion of an existing building was not considered to be inappropriate development in the Green Belt. Accordingly that decision does not lead me to any different conclusions in relation to the appeal before me.
33. The appellant purchased the appeal site in 2020 and may have been unaware of the planning policies applying to the site. However, it is a matter for any purchaser of land to ascertain what may be acceptable on the site prior to committing to purchase. The appellant considers the Council has a negative attitude towards development. Neither of these matters go to the heart of the planning considerations in relation to the current appeals.
34. The appellant considers that the Council should have included the land on its brownfield register. However, it was anticipated in 2017 that the site would be restored to beneficial use. In any case, I have taken account of the nature of the site and reached my own conclusions on the matter.

Conclusion

35. Each of the appeal proposals would be inappropriate development, which by definition is harmful to the Green Belt. Each would also be harmful to its openness. In accordance with the Framework I give substantial weight to such harms.
36. There would be harmful urbanisation of the open countryside; harm to the setting of a listed building, albeit less than substantial; for appeal C5, and to a lesser extent for appeal B4, the opportunity for recreational/community amenity land would be lost; satisfactory access has not been demonstrated; the effect on protected species and habitats has not been satisfactorily addressed; appropriate living conditions would not be provided for occupants of some of the houses at appeals B4 and C5; and at appeal C5 a protected tree would be lost. Taking all this into account the proposals would not improve the environmental conditions of the area. In combination I give moderate to substantial weight to these harms.
37. The other considerations set out above, together, attract moderate weight in favour of the proposals.
38. On balance I conclude that, even when taken together, the harm by reason of inappropriateness and other harm is not clearly outweighed by other considerations. Consequently, in accordance with the Framework, the very special circumstances to justify the proposals in the Green Belt do not exist, and the proposal would conflict with the 2021 Framework; Policy CS3 of the CS and Policy NHE5 of the DMP.
39. In failing to comply with Policies in the CS and DMP the proposals cannot comply with the development plan as a whole. For the reasons set out above, I conclude that the appeals should not succeed.

S Harley

INSPECTOR