



Appeal Decision

Site Visit made on 14 September 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2021

Appeal Ref: APP/C3620/W/21/3269130

1 Vincent Walk, Dorking RH4 2HA

- 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 Oakwood Real Estate Ltd. against Mole Valley District Council.
 - The application Ref MO/2020/0432, is dated 2 March 2020.
 - The development proposed is "Erection of 18 No. dwellings with associated access, parking and landscaping, following removal of existing buildings."
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Decision

1. The appeal is allowed and planning permission is granted for "Erection of 18 No. dwellings with associated access, parking and landscaping, following removal of existing buildings" at 1 Vincent Walk, Dorking RH4 2HA in accordance with the terms of the application, Ref MO/2020/0432, dated 2 March 2020, subject to the attached Schedule of Conditions.

Preliminary Matters

2. The description of the development proposed changed while the application was being considered by the Council. The appellant has provided the revised description in their appeal form, which I have referred to in the banner heading of this decision, having omitted the superfluous text describing the amendments made to the original proposal. I have therefore assessed the proposal based on the amended plans submitted to the Council, as identified in Condition 2 of this decision.

Background and Main Issues

3. Had the Council issued a decision on the appeal scheme, they would have granted permission, subject to the security of an affordable housing contribution. The appellant argues that the scheme would be unviable with such a contribution. With this in mind, the main issue is whether the appeal scheme should make provision for affordable housing.

Reasons

4. The appellant has submitted an Economic Viability Assessment Report¹ ('the EVAR') which relies on Argus Developer appraisal software and concludes that the proposal could not sustain a contribution towards affordable housing. The EVAR was submitted to the Council prior to the submission of the appeal, and they have been given an opportunity to study and comment on it, and

¹ U.L.L. Property, February 2021

complete their own assessment if necessary; however, no comments or information in respect of the proposal's viability have been submitted by the Council. The Council claims the absence of a mechanism for an affordable housing contribution would be contrary to Policy CS4 of their Core Strategy².

5. Policy CS4 sets out how the Council aims to secure 950 net affordable units between 2006 and 2026. I have not been provided with information as to how many affordable units are needed within the District at present. The Council have not clarified what level of affordable housing contribution they would consider appropriate in this case, but the policy states that where viable, on all housing developments of 15 gross dwellings or more, 40% of the total number of dwellings will be required to be affordable. The policy's supporting text states: *"Those applicants / builders who cite non-viability as the reason for not complying with the requirement to provide affordable housing or a financial contribution, must support their case with financial evidence to be submitted with the planning application. This evidence must be based on the assessment of the site by using a recognised appraisal tool. The evidence will then be open to scrutiny"*.
6. As the EVAR was submitted to the Council prior to the appeal being lodged, it has been open to public scrutiny for a substantial period, but my attention has not been drawn to any concerns with the EVAR's methodology or findings. The EVAR has relied on recent data and a recognised appraisal tool and follows the government's recommended approach³. It found the benchmark land value for the appeal site would exceed the residual land value by £477,000. I am not aware of any evidence which may suggest the proposal could remain viable alongside an affordable housing contribution.
7. In addition to the EVAR, the appellant has referred to the recent planning history at the appeal site, which includes extant planning permissions⁴ for a combined 32 dwellings, without any affordable housing provision. I note that 23 of those dwellings benefit from planning permission granted under the provisions of the GPDO⁵, avoiding any need to comply with Policy CS4. The other 9 dwellings would have needed to include a financial contribution equivalent to providing 20% of the total number of dwellings as affordable to comply with Policy CS4, but the Council did not object to that proposal making no such contribution. Previous planning applications proposing 26 and 23 dwellings at the appeal site were refused and dismissed at appeal⁶ for other reasons, but in both of those cases it was accepted the proposals could not fully satisfy the requirements of Policy CS4 while remaining viable, resulting in 5 and 1 shared ownership properties forming part of those proposals respectively. The EVAR has been revised since the submission of those proposals, referring to more recent data and the reduced number of dwellings proposed.
8. In the absence of any information suggesting otherwise, and for the reasons I have given, the appeal scheme would comply with the provisions of Policy CS4

² Mole Valley Local Development Framework Core Strategy DPD (2009)

³ Paragraph 010 Reference ID: 10-010-20180724 – Paragraph 021 Reference ID: 10-021-20190509, Planning Practice Guidance

⁴ MO/2020/1843 (allowed on appeal: APP/C3620/W/21/3267897), MO/2020/1189, MO/2020/1188, MO/2020/1187, and MO/2019/0888

⁵ The Town and Country (General Permitted Development) (England) Order 2015 (as amended)

⁶ APP/C3620/W/17/3191897 and APP/C3620/W/19/3225377

insofar as it has been appropriately demonstrated the scheme would not be viable alongside an affordable housing contribution.

Other Matters

9. Interested parties have raised various concerns which appear to have been addressed by previous Inspectors as part of the appeals referred to at footnotes 3 and 6, which were different schemes that bear some similarities to the proposal. The Council have not raised any concerns in these regards. In particular, I note the Highway Authority raised no objection on pedestrian or highway safety grounds and I have not been presented with any detailed evidence to lead me to doubt their conclusions on those grounds.
10. The appeal site is located within the Dorking Conservation Area (CA). Inspectors in the previous appeals considered the demolition of the existing historic commercial buildings and found no harm would be caused to the character or appearance of the area or the significance of the CA. I see no reason to conclude otherwise. The proposed buildings would be of appropriate scale, design and siting for this location, reflecting the range of two storey terraced buildings set at different levels in the immediate surrounding area and would thus preserve the character of the CA as a whole.
11. Some of the proposed buildings would have higher rooflines than the existing buildings, but this would not harm the living conditions of any neighbouring residents due to those increases being minimal and the positioning of the proposed buildings in relation to neighbouring properties. Based on the information available, there would be very little change in the levels of light received by neighbouring properties. There would also be no opportunities for any unacceptable levels of overlooking of neighbouring properties on account of the sympathetic fenestration arrangements proposed, which include the use of roof lights on sensitive elevations. Considering the existing use of the appeal site for commercial purposes, I do not see any opportunities for the proposed residential use to result in any adverse noise effects upon the occupants of neighbouring properties beyond those associated with the existing use.
12. Concerns relating to noise and disturbance during the construction phase and drainage can be reasonably addressed by conditions, similar to those suggested by the Council. Any concerns relating to the structural stability of retaining walls within and skirting the site would be addressed under separate legislation.

Conditions

13. I have considered the Council's list of suggested conditions and made amendments where needed to ensure they accord with the Guidance⁷. It is necessary to attach a condition requiring the commencement of development within the appropriate timeframe and a condition identifying the approved plans in the interests of clarity and for enforcement purposes. A condition requiring the development to be carried out in accordance with the measures set out in the Energy and Sustainability Assessment is also necessary to ensure the proposal accords with the Council's development plan.
14. A Construction Method Statement should be submitted and approved prior to the commencement of works due to the appeal site's location in close proximity

⁷ Paragraph: 003 Reference ID: 21a-003-20190723, Planning Practice Guidance

to neighbouring residential properties, with restricted access points. Pre-commencement conditions relating to land contamination and archaeological investigations are also necessary due to the appeal site's historic uses and location within an area of high archaeological potential. Details of a scheme for the recording of historic features prior to the commencement of demolition are required in accordance with the recommendations of the Historic Environment Desk-Based Assessment and the Framework⁸.

15. Levels vary across the site, and it would therefore be necessary to attach conditions requiring the submission of further details of existing and finished levels and details of how surface water drainage will be dealt with, prior to the commencement of development. As the appeal site is located within a Source Protection Zone, it is also reasonable to attach conditions prohibiting the piling of any foundations using penetrative methods, or the installation of any drainage systems for the infiltration of surface water into the ground, other than with the consent of the Council.
16. A hard and soft landscaping scheme and details of external joinery, ventilation systems, flues and meter boxes should be approved prior to the commencement of development above ground level to ensure the finished scheme blends appropriately with its surroundings, in the context of the CA. The ecological appraisal and subsequent letter by Sim Law Ecology set out recommendations relating to the protection of nesting birds and bats, and the inclusion of planting of recognised wildlife value to invertebrates and birds. Details of such planting can be required by the Council as part of the soft landscaping works to be approved, and the protection of nesting birds and bats would be ensured by other legislation. No condition requiring compliance with the ecological appraisal's recommendations is therefore necessary.
17. Conditions requiring the implementation of the vehicle parking and turning spaces, modified access to Arundel Road, and bicycle parking and refuse storage facilities prior to the first occupation of any dwelling are necessary to ensure the development is finished appropriate to its surroundings, providing necessary facilities in accordance with the Council's development plan and to protect pedestrian and highway safety. Further details are required in respect of a refuse management strategy prior to the first occupation of any dwelling, to show how waste would be transferred between the storage facilities in different parts of the site.
18. The plans show roof lights to a number of dwellings, which are annotated to confirm their siting intends to avoid any overlooking of neighbouring properties. Due to the arrangement of proposed dwellings and neighbouring properties, and to avoid unacceptable levels of overlooking, it is reasonable and necessary to attach a condition requiring the cill heights of all rooflights to not be less than 1.7m above internal floor levels. For similar reasons, a condition prohibiting the installation of any additional windows to dwellings is reasonable and necessary, as is a condition prohibiting the extension of any dwelling on account of the restricted space within the appeal site and the need to ensure living conditions are protected and the character or appearance of the CA is preserved or enhanced.
19. The Council have suggested a condition relating to half of a first floor north facing window to Plot 5. There would be three roof lights at first floor level on

⁸ National Planning Policy Framework (2021)

the north facing elevation of Plot 5, which would be subject to the Council's suggested condition controlling their cill height. For this reason, there would be no need for any parts of these windows to be obscure glazed, as they would not result in unacceptable levels of overlooking.

20. The Council have also suggested a condition relating a delivery parking space described as being shown on the layout plan. There are no delivery parking spaces shown on the layout plan and the Council have not raised any concerns in this regard. It would therefore be unreasonable to attach any such condition.

Conclusion

21. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. The appellant has demonstrated the proposal would not be viable if the affordable housing requirements set out in the development plan were to be provided. The development plan makes an exception to affordable housing contributions in such instances. For the reasons given above, I therefore conclude that the appeal should be allowed.

L Douglas

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 101 Rev D, 105 Rev E, 106 Rev E, 120, 121, 122, 123 Rev A, 124 Rev B, 125 Rev B, 126 Rev A, 127 Rev A, 128 Rev A, 129 Rev A, 130 Rev A, 131 Rev A, 132 Rev A, 133, 140 Rev B, 141 Rev A, 142 Rev A, 143 Rev A, LOC1 Rev B.
- 3) 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 local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) a programme of works, including measures for traffic management;
 - v) measures to mitigate on-site noisy activities during construction;
 - vi) details of on-site turning for construction vehicles; and
 - vii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No development shall take place until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to: human health; proposed properties; adjoining land; and ground waters and surface waters.
- 5) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

- 6) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 7) Part (i) No development shall take place until details of the design of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The design must satisfy the SuDS Hierarchy and be compliant with the national Non-Statutory Technical Standards for SuDS, NPPF and Ministerial Statement on SuDS. The required drainage details shall include:
- a) The results of infiltration testing completed in accordance with BRE Digest: 365 and confirmation of groundwater levels.
 - b) Evidence that the proposed solution will effectively manage the 1 in 30 & 1 in 100 (+40% allowance for climate change) storm events, during all stages of the development (pre, post and during), associated discharge rates and storage volumes shall be provided using a Greenfield discharge rate of 1.31l/s (as per the SuDS proforma or otherwise as agreed by the local planning authority).
 - c) Detailed drainage design drawings and calculations to include: a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features (silt traps, inspection chambers etc.).
 - d) A plan showing exceedance flows (i.e. during rainfall greater than design events or during blockage) and how property on and off site will be protected.
 - e) Details of drainage management responsibilities and maintenance regimes for the drainage system.
 - f) Details of how the drainage system will be protected during construction and how runoff (including any pollutants) from the development site will be managed before the drainage system is operational.
- Part (ii) The development shall be carried out in accordance with the approved surface water drainage scheme and a verification report carried out by a qualified drainage engineer shall be submitted to and approved by the local planning authority prior to the first occupation of any dwelling hereby permitted. The verification report shall demonstrate that the approved surface water drainage scheme has been fully implemented in accordance with the details approved, or explain any minor variations, and provide details of any management company and state the national grid reference of any surface water attenuation devices/areas, flow restriction devices and outfalls.
- 8) No development shall take place until a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include:

- i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation. The development shall be carried out in accordance with the approved details.
- 9) No development shall take place until the following information has been submitted to and approved in writing by the local planning authority:
- i) a full site survey showing: the datum used to calibrate the site levels; levels along all site boundaries; levels across the site at regular intervals;
 - ii) full details of the proposed finished floor levels of all buildings and hard landscaped surfaces. The development shall be carried out in accordance with the approved details.
- 10) No development shall take place until a scheme for the recording of existing architectural and historic features affected by the works has been submitted to and approved in writing by the local planning authority. The scheme shall then be completed as approved.
- 11) No development above ground level shall take place until sample panels of all new facing brickwork showing the proposed bricks, face-bond and pointing mortar have been provided on site and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved sample panels and the approved sample panels shall be retained on site until the work is completed.
- 12) No development above ground level shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
- i) planting of trees, shrubs, herbaceous plants and areas to be grassed;
 - ii) means of enclosure and retaining structures;
 - iii) boundary treatments;
 - iv) hard surfacing materials;
 - v) an implementation and maintenance programme.
- The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. The completed scheme shall be maintained in accordance with the approved scheme of maintenance.
- 13) No development above ground level shall take place until details of all external joinery have been submitted to and approved in writing by the local planning authority including materials, method of opening and large scale drawings showing sections through mullions, transoms and glazing bars, and window and door reveals. The development shall be carried out in accordance with the approved details.

- 14) No development above ground level shall take place until details of all proposed extract flues, ventilation systems and meter boxes have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 15) The development hereby permitted shall be carried out in accordance with the measures set out in the Conclusion section (Page 29) of the Planning Statement: Energy and Sustainability Assessment by Eight Associates, dated 1 August 2018.
- 16) No dwelling shall be first occupied until secure, covered space has been laid out within the site in accordance with drawing nos. 6343-101-D, 6343-105-E and 6343-141-A for 18 bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.
- 17) No dwelling shall be first occupied until refuse and recycling storage facilities have been laid out within the site in accordance with drawing nos. 6343-101-D, 6343-105-E and 6343-133 and those facilities shall thereafter be kept available for the storage of refuse and recycling.
- 18) No dwelling shall be first occupied until space has been laid out within the site in accordance with drawing no. 6343-105-E for 18 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
- 19) No dwelling shall be first occupied until the proposed modified access to Arundel Road has been constructed in accordance with drawing no. 6343 105-E.
- 20) No dwelling shall be first occupied until a refuse management strategy has been submitted to and approved in writing by the local planning authority. The refuse management strategy shall include details of when and by whom refuse and recycling will be transferred between the refuse and recycling stores shown on drawing nos. 6343-101-D, 6343-105-E and 6343-133. The approved refuse management strategy shall be implemented upon the first occupation of any dwelling and shall be adhered to thereafter.
- 21) No piling of any foundation designs using penetrative methods shall be carried out other than with the express written consent of the local planning authority.
- 22) No drainage system for the infiltration of surface water drainage into the ground shall be carried out other than with the express written consent of the local planning authority.
- 23) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows, dormer windows, glazed openings or roof lights other than those shown on the approved plans shall be constructed.

- 24) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions to any dwelling shall be constructed.
- 25) The cill heights of the rooflights shown on Plan 106 Rev E shall not be less than 1.7 metres above the internal floor level of the room in which they are located.