



Appeal Decision

Site Visit made on 26 October 2021

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2021

Appeal Ref: APP/C3620/W/21/3269468

Heli, Guildford Road, Fetcham KT22 9DP

- 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 Mrs Al-Khudhairi against the decision of Mole Valley District Council.
 - The application Ref MO/2020/1820/PLA, dated 9 October 2020, was refused by notice dated 30 November 2020.
 - The development proposed is the erection of a two storey house with detached garage.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Al-Khudhairi against Mole Valley District Council. This application is the subject of a separate decision.

Preliminary Matters

3. A revised Framework¹ was published by the Government between the determination of the planning application and the appeal coming before me, which does not raise any new considerations in relation to this appeal. The substantive elements thereof remain the same as the previous iteration in regard to the main issues of the appeal.

Main Issues

4. The main issues are the effect of the proposed development on a) the character and appearance of the area; b) the living conditions of neighbouring occupiers, with particular regard to the effect of the proposed driveway; c) highway safety; d) archaeological interests; and e) ecology.

Reasons

Character and Appearance

5. The appeal site is occupied by a large, part single, part two-storey detached dwelling, which is set back within the site. The surrounding area is similarly characterised by large, detached dwellings set within large plots. Together with the width of the roads and the extensive tree and boundary planting, the area has a spacious and verdant character.

¹ National Planning Policy Framework (2021)

6. Policy ENV17 of the Local Plan² seeks to protect specific areas of the district which are characterised by low density housing, known as Residential Areas of Special Character (RAOSC). Although Guildford Road is not specifically mentioned in Policy ENV17, the policy is said to apply to areas, as opposed to individual roads. On a plain reading, the roads mentioned in Policy ENV17 appear to delineate an area to which the policy applies. I also note that the B2122, to the east of the appeal site, is known as Hawk's Hill (which is mentioned in Policy ENV17) but becomes Guildford Road by the point it reaches the appeal site. The appeal site should therefore be considered as being within the RAOSC identified in Policy ENV17 for Fetcham.
7. The proposal would result in the subdivision of the existing plot. The host dwelling would retain a reasonable garden area to the rear, but it would be noticeably reduced in comparison to the existing situation. The plot would also be noticeably narrower as a result of the proposed dwelling's access arrangements and driveway, which itself is not reflective of the area's general character. The proposed new plot would be smaller in comparison to the prevailing character of the immediate area. Cumulatively these factors would result in the proposal being out of keeping contrary to Policy ENV17.
8. There does not appear to be any particular design rationale for how the proposed building's design has evolved or why it has not been possible to accord with Policy ENV23 of the Local Plan, which expects pitched roofs to be used. Whilst there are a variety of housing styles in the area, the use of a large crown roof for the main part of the house is not generally reflective of the wider area. The result would be an appearance that adds to the overall incongruity of the proposal. I accept that there are examples of other 'backland' development in the area, however such examples are relatively few. Moreover, there is no detailed information before me as to the planning circumstances relevant there (in terms of existing uses, policy context, or material considerations).
9. Accordingly, I find that the proposal would cause harm to the distinctive character and appearance of the area. As such, it would be contrary to Policies ENV17, ENV22 and ENV23 of the Local Plan, and Policy CS14 of the Core Strategy³, which amongst other things, seek to ensure proposals respect the particular appearance and characteristics of the area. The proposal would also be contrary to Paragraph 130 of the Framework, which amongst other things, seeks to ensure developments are sympathetic to local character.

Living Conditions

10. The proposed driveway would run along the site's north eastern boundary. It would have to pass very close to the north eastern elevation of the host property and would run alongside the full length of its retained rear garden. The new boundary to the host property is shown as being subject to new landscaping. However, this would not disguise either the driveway's length or proximity.
11. In this particular setting, where houses are set back from the main road and gardens provide a more tranquil and private environment for occupants, a new access road would introduce a significant detraction. The driveway would serve

² Mole Valley Local Plan (2000)

³ Mole Valley Local Development Framework Core Strategy (2009)

a 5-bed dwelling and there would be all the comings and goings commensurate with a property of that size. Given the nature of the driveway, it seems to me that noise and activity generated would likely to entail some level of disturbance and result in behaviour changes such as shutting windows or speaking more loudly. As such the proposal would in my view be intrusive. The erection of any walling or fencing alongside the driveway would be unlikely to mitigate this to an acceptable degree.

12. I acknowledge that there are examples of driveways passing housing elsewhere in the area. However, they are far from commonplace or characteristic. The characterisation of the area via the Local Plan as a RAOSC is consistent with my site observations of the relatively spacious pattern of development, and commensurate tranquillity within rear gardens. Moreover, the existence of driveways passing housing in the area does not in itself indicate that additional noise and disturbance should be permitted.
13. The proposal would therefore conflict with Policies ENV22 and ENV23 of the Local Plan and Policy CS14 of the Core Strategy, which amongst other things, seek to not significantly harm occupiers of neighbouring properties through such matters as noise or traffic. The proposal would also be contrary to Paragraph 130 of the Framework, which amongst other things, seeks to ensure developments provide a high standard of amenity for existing and future occupiers.

Highway Safety

14. An existing traffic island is positioned opposite the proposed site entrance. This would prevent right-turns into and out of the site. As the island is designed to narrow the road at this point it would also hinder left turns, particularly when exiting the site onto what, as I observed, can at times be a busy road. Given these arrangements, I share the Highway Authority's concerns regarding the highway safety implications of the proposal.
15. Since the determination of the application, the appellant has been in discussions with the Highway Authority regarding the repositioning of the traffic island on Guildford Road. I have not been provided with all the correspondence, but it appears that the Highway Authority has indicated to the appellant that this could be achieved in principle via a s.278⁴ legal agreement. However, there are no substantive plans or details before me, including related to the certainty of such a project or its timescales (and an appeal should not be used to evolve a proposal).
16. Even if I were to give the prospect of the highway safety concerns being overcome some weight, I am not aware that the Highway Authority has confirmed that a repositioned traffic island would achieve the same level of highway safety as the existing situation. I am similarly unable to conclude, that even if I were minded to use a negatively worded condition, that there is the prospect of such works being completed within the 3 year time limit of any permission.
17. In view of all of the above, I cannot conclude that the appeal scheme would be acceptable in respect of highways effects and thus be in accordance with the Local Plan.

⁴ Highways Act 1980

18. Accordingly, it would be contrary to Policy MOV2 of the Local Plan, which amongst other things, seeks to ensure development is, or can be made compatible, with existing highway infrastructure and that there is appropriate provision for vehicular access and egress to sites. The proposal would also be contrary to Paragraph 111 of the Framework, which amongst other things, seeks to ensure that developments are not permitted if there would be an unacceptable impact on highway safety.

Archaeology

19. The Council identifies the site as falling within an Area of High Archaeological Potential (AHAV). The appellant has not disputed this and has not provided an archaeological desk assessment as required by Policy ENV49 of the Local Plan. A desk assessment is therefore required not only to establish the potential for such finds and secure their appropriate recording/preservation, but such assessments can, if necessary, help to inform the subsequent design and layout of the development itself.
20. Given the scale of the works proposed and the designation of the area, I do not consider that a condition to have an archaeologist present on site during excavations would be a sufficiently robust approach. Notwithstanding the wider area having been subject to housing development, in order to minimise the risk to any potential remains a more precautionary approach would be appropriate in this instance. Thus, in the absence of any information on the archaeology of the site, I cannot be certain that the proposal would not cause harm to the archaeology of the area.
21. The Council refer to Policy ENV53 of the Core Strategy in their reason for refusal but this appears to be a drafting error. I have been provided with a copy of Policy ENV49 of the Local Plan, to which I referred earlier. I find that the proposal is contrary to this policy, which amongst other things, requires significant development proposals within an AHAV to provide an initial assessment of the archaeological value of a site as part of any planning submission.
22. 'Significant' is not defined in the policy but given the size of the proposed dwelling, the length of the access road and extensive parking/turning areas, the development would involve significant excavation within the AHAV, and would be a significant proposal in this respect. This approach would broadly reflect Paragraph 194 of the Framework, which amongst other things, encourages the submission of desk-based assessments where a development has the potential to include heritage assets with archaeological interest.

Ecology

23. Given the site's context, some wildlife could be expected. However, much of the garden is grassed, and based on my own observations, the trees and planting appeared to be well managed and maintained, thus limiting potential habitats for protected species. There's no reason to assume it wouldn't continue to be maintained as such.
24. Moreover, I note that the site is not in an area formally protected on account of its ecological significance, no trees are subject to preservation orders and there are separate regimes protecting species. There is furthermore no substantive

evidence before me that, in other respects, the site is particularly valuable to ecology other than in much the same way as any residential garden.

25. In the circumstances, I conclude that there is no substantive evidence to demonstrate that the proposal would cause harm to protected species (subject to the imposition of appropriately-worded conditions were the scheme otherwise acceptable). Accordingly, I find that the proposal would comply with Policy ENV15 of the Local Plan and Policy CS15 of the Core Strategy, which amongst other things, seek to ensure developments avoid the loss of protected species or their habitat. The proposal would therefore accord with Paragraph 174 of the Framework, which amongst other things, seeks to minimise impacts on biodiversity.

Other Matters

26. The appellant has drawn my attention to other developments within the vicinity of the appeal site which are said to demonstrate the acceptability of this type of development. However, I do not have the full details of those decisions, which may pre-date the Framework, and therefore I cannot be sure that they represent a direct parallel. In any case, I have determined the appeal on its own merits.
27. Although the appellant has indicated a willingness to enter into an obligation to reposition the traffic island, and even if the Highway Authority were subsequently to agree to such measures, it would not lead me to allowing the appeal. This is because I have found the proposal would give rise to harm in other areas, over which the submission of highways details would have no direct effect.

Planning Balance and Conclusion

28. The Council acknowledge that they can only demonstrate 3.15 years of supply of housing land. Accordingly, I must have regard to paragraph 11 of the Framework as in this context the most important policies are considered out of date and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
29. I have found that the proposed dwelling would cause harm to the character and appearance of the area; harm the living conditions of existing neighbours; be unable to demonstrate it would not cause harm to highway safety or an AHAV. These harms would be permanent and long lasting and would lead to conflict with the Framework, in particular Paragraphs 111, 130 and 194. That is notwithstanding that the appeal does not fall within an area to which protective policies, as defined in Framework footnote 7, relate.
30. The Government's objective is to significantly boost the supply of housing and the proposal would provide a single dwelling with adequate access to local services. The proposal would also accord with the Framework's support for windfall sites. However, the provision of a single dwelling, by its nature, would make only a small contribution towards housing supply (although I accept that the extent of the shortfall in the area's housing supply puts added emphasis on all new housing developments, of whatever scale). The scheme would also lead to some, albeit time-limited, economic benefits during the construction phase, which may give rise to extra local employment.

31. As such, the adverse impacts of granting a planning permission would, in this case, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. It would not therefore be sustainable development.
32. For the reasons given above, I conclude that the proposal would fail to accord with the development plan and there are no material considerations, including the Framework, that would indicate planning permission should otherwise be granted. The appeal should therefore be dismissed.

Stewart Glassar

INSPECTOR