



Appeal Decision

Site visit made on 21 December 2021

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Appeal Ref: APP/C3620/W/21/3272641

Happy Acres, Russ Hill, Charlwood RH6 0EL

- 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 Leigh Phillips against the decision of Mole Valley District Council.
 - The application Ref MO/2020/1847/PLA, dated 14 October 2020, was refused by notice dated 23 December 2020.
 - The development proposed is the erection of 1 new build dwelling; in the alternative to permission granted under MO/2020/1019 Prior notification for the change of use of two agricultural buildings to 2 No. dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised Framework¹ was published by the Government between the determination of the planning application and the appeal coming before me. It does not raise any new considerations in relation to this appeal.

Main Issues

3. The main issues are:
 - a) whether the proposed development would be inappropriate development in the Green Belt;
 - b) the effect of the proposed development on ecology; and
 - c) would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development

4. Paragraph 149(d) of the Framework identifies the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces, as not being inappropriate development in the Green Belt. The appeal building has been granted prior approval for its change of use from a poultry barn to a dwelling. A second building, currently described as an agricultural barn, also has prior approval for a change of use to a dwelling and

¹ National Planning Policy Framework (2021)

would be demolished as part of the appeal proposal. At the time of my site visit there were no indications that the changes of use had been implemented and that either building was in use as a dwelling. Consequently, the proposal would not fall within the exception listed in paragraph 149(d) of the Framework.

5. The appellant notes that it would not be sensible to convert a building to a dwelling just so as to be able to seek its replacement. Whilst I have some sympathy with the appellant's position, the Framework does not include a provision whereby an unimplemented approval can be taken into account. Thus, on a straightforward reading of the Framework, the replacement building would not be in the same use as the one it would replace.
6. Paragraph 149(g) of the Framework identifies the partial or complete redevelopment of Previously Developed Land (PDL), whether redundant or in continuing use, as not being inappropriate development in the Green Belt. The appellant notes that the site could be considered to be PDL. However, as the proposed dwelling would be larger than the building it replaces, not all of the proposed site could be considered PDL, taking into account the establishment of a curtilage and access. Notwithstanding this, and in such a situation, I must also have regard to the second limb of paragraph 149(g) of the Framework, which specifically requires me to consider the effect of the proposed development on the openness of the Green Belt, in order to determine whether the exception applies.
7. The proposal would involve the removal of two small buildings which could be converted to dwellings, and their replacement with a single dwelling. The existing buildings are some distance apart, but their combined footprints would be comparable to the proposed new dwelling. However, the new building would, by virtue of the size and shape of its roof, have an overall greater visual and physical presence. The proposed dwelling would be positioned in a comparable location to the poultry barn, which is on rising land, whereas the agricultural barn is on lower lying land. Thus, the consolidation of all the development on this single site, in the form proposed, would accentuate the overall effect on the openness of the Green Belt, when compared to the existing situation or the situation were the prior approval to have been implemented and completed.
8. Unlike the prior approvals, the proposed single dwelling details a garden curtilage with a parking/turning area. Given the size of the curtilage, it is likely that some domestic paraphernalia would also be placed on the land. Given the absence of any facilities to store such items, they are likely to become semi-permanent features and so the openness of the land would be further hindered.
9. Taking all these factors together, this would result in a noticeable loss of openness in the Green Belt when compared to the existing situation. Accordingly, the proposal would conflict with the fundamental aim of Green Belt policy, which is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
10. I therefore conclude that the proposal would be inappropriate development in the Green Belt, contrary to Policy CS1 of the Core Strategy² and the Framework which, amongst other things, seek to restrict inappropriate

² Mole Valley Local Development Framework Core Strategy (2009)

development in the Green Belt. By definition, inappropriate development would be harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework states that in considering a proposal substantial weight should be given to any harm to the Green Belt.

Ecology

11. As part of the appeal submission, the appellant has provided a Great Crested Newt Non-Licensed Mitigation Method Statement, prepared by Sylvatica Ecology in April 2021. This addresses the Council's concerns over the Preliminary Ecological Appraisal Survey undertaken by Arbtech in May 2020, which recommended but did not contain a sampling survey of the nearby ponds.
12. Having regard to the information now provided, I find that the proposed development would not cause harm to the ecology of the area and subject to the imposition of appropriate conditions, the proposal would comply with Policy CS15 of the Core Strategy and Policy ENV15 of the Local Plan³. These policies, amongst other things, seek to ensure developments avoid the loss of protected species or their habitat. The proposal would therefore also accord with Paragraph 174 of the Framework, which amongst other things, seeks to minimise impacts on biodiversity.

Other Considerations

13. In drawing my attention to the existing prior approval to convert the poultry barn and agricultural barn to two new one-bedroom dwellings, the appellant suggests that this would represent a significant material consideration which would amount to very special circumstances. Whilst the approval has not been implemented, given that it would not expire until 2023, there is more than sufficient time for it to be implemented and the works completed. I have no reason to doubt the appellant's intention in this regard. In contrast, the Council urges a degree of caution, noting that when granting the prior approval, it attached an informative that highlighted its concerns as to whether the lawful use of the buildings is agricultural.
14. Whilst the lawfulness of the buildings is not directly before me, I observed during my site visit that the buildings appeared to be in a poor state of repair, especially the agricultural barn, which was surrounded by pools of water, which appeared to be the result of its low lying position relative to the surrounding land. Also, this building did not appear to have been used for a long period of time. However, this in itself does not provide a basis to suggest other, non-agricultural uses may have taken place. The Council has not elaborated on its reservations regarding the lawful use of the buildings. Consequently, it is difficult for me to attach weight to their concerns in this instance.
15. Therefore, at present the prior approval appears to represent a legitimate alternative development option. However, the weight I could attribute to it in this appeal must be tempered by the differences I have previously highlighted between the approved scheme and the appeal proposal. Accordingly, the prior approval does not in my opinion represent a direct, like-for-like comparison with the appeal proposal as it does not have the same level of harm on the surrounding area.

³ Mole Valley Local Plan (2000)

16. The appellant has drawn my attention to a number of appeal decisions in the area where significant weight has been given to the fall-back position. Putting aside that weight is a matter for the decision maker in each case, I have considered the appeal proposal on its own merits and, taking this and the above into account, I attach only moderate weight to the prior approval as a fallback position.
17. I am aware of the Government's objective to significantly boost the supply of housing, along with their broad support for windfall sites. However, the proposal would result in the potential loss of a unit, albeit in compensation the proposed unit would provide two bedrooms. In this regard the appellant draws my attention to Policy CS3 of the Core Strategy, which supports the provision of family sized accommodation. However, given the scale of the development I could attach only limited weight to this matter.
18. The appellant notes that the design and appearance of the proposed dwelling has been carefully thought through and would represent an improvement in design terms compared to the extant approval. The Council does not object to the design of the building in itself and I have no reason to disagree. I acknowledge that the proposal would be a new development and so would more clearly have the appearance and characteristics of a dwelling.
19. In contrast, the existing buildings are currently in a poor state of repair. However, it is reasonable to assume that as part of the prior approval works, there will be some maintenance, improvement or other alteration of the buildings which would also improve their appearance. They would retain their existing sizes and profiles, but these buildings already exist and so there is likely to be an overall net improvement once the prior approval works are completed. The difference between this improvement and the design/appearance of the proposed dwelling would not in my opinion be so significant that I could attribute more than limited weight.
20. There are also other improvements cited such as removing concrete bases and better rainwater run-off associated with the current proposal. However, given the scale of the development I could give these factors only limited weight.
21. In response to the Council's concerns regarding the pressure for additional curtilage buildings, the appellant points out that much of the curtilage is between the dwelling and the road and thus any buildings would require planning permission. Nevertheless, given the size of the curtilage, it is reasonable to assume that there would be some larger items such as tables and chairs, parasols or children's play equipment placed within the curtilage, particularly during the summer months. Without any storage provision for garden paraphernalia, such items would be likely to become semi-permanent fixtures, reinforcing the domestic appearance and character of the site.
22. In addition, there is nowhere to store items such as cycles or gardening equipment. Even if the garden were to remain as lawn, there would be a need for some gardening equipment. Whilst permitted development rights could be restricted with regard to further outbuildings, and even if pressure for such buildings were resisted, the outcome would be the open storage of such equipment and accessories within the curtilage. This would have a negative effect on the appearance of the site and, as I have said, reduce the openness of the Green Belt albeit in isolation to a lesser degree.

23. As an alternative, the appellant has indicated a willingness to consider a smaller curtilage although no plan showing this has been provided. However, my amending the scheme in this way would prejudice the Council and any other interested parties from commenting. Furthermore, any such condition to address this matter would be difficult to draft with sufficient precision to meet the necessary tests.
24. The appellant's Planning Design and Access Statement, submitted in support of the initial planning application, made reference to what is now Paragraph 80 of the Framework. However, the proposed dwelling would not be isolated and accordingly the provisions of that paragraph would not apply.
25. The appellant highlights a number of matters which are said to be common ground with the Council, including the effect on neighbours, the size of the dwelling and the materials to be used in its construction. However, such matters would represent a lack of harm in each case which would accordingly be neutral in any balance.

Other Matters

26. The Council acknowledges that it is unable to provide a five year supply of deliverable housing land. Accordingly, I must have regard to paragraph 11 of the Framework, which indicates that in such circumstances the most important policies for determining the application are out of date and that permission may be granted.
27. However, the balance in favour of the grant of planning permission at paragraph 11 d), is conditional on satisfying the first limb of whether there are policies in the Framework that protect areas of particular importance which provide a clear reason for refusing the development proposed. Green Belts are such a protected area and as I have identified, the proposal would represent inappropriate development which would cause harm to the openness of the Green Belt such that there would be conflict with paragraph 137 of the Framework. This paragraph seeks to limit the extent of development in these nationally important areas. As a result, the second limb of paragraph 11 d) and the balance in favour of the grant of planning permission would not apply in this instance.

Conclusion

28. The proposal would constitute inappropriate development in the Green Belt. As such, the Framework requires that the harm by reason of inappropriateness be given substantial weight and that inappropriate development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
29. The weight I give to the considerations cited in support of the proposal is moderate, for the reasons I have given. Accordingly, they do not clearly outweigh the harm the development would cause. The very special circumstances necessary to justify the proposal do not therefore exist.
30. The proposed development would be contrary to the Framework and to the development plan which seek to protect the Green Belt. The fact that I have found in the appellant's favour with regard to any effects on ecology does not outweigh the totality of the harm I have identified and does not alter my

conclusions, having considered all other relevant material considerations, including the approach of the Framework.

31. The appeal should therefore be dismissed.

Stewart Glassar

INSPECTOR