



Appeal Decision

Site visit made on 17 January 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd February 2022

Appeal Ref: APP/C3620/W/21/3281437

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 planning permission.
 - The appeal is made by Mr Adrian Sykes (Skye Construct Limited) against the decision of Mole Valley District Council.
 - The application Ref MO/2021/0684/PLA, dated 9 April 2021, was refused by notice dated 16 August 2021.
 - The development proposed is described on the application form as, "An unintrusive, low profile, subtle, elegant and attractive new subterranean executive development of exceptional quality".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Differing to the description of development in the banner header above, the Council's decision notice accurately describes the development as shown on the supporting plans as, "Erection of 1 No. dwelling with associated parking and landscaping". I have used this description in my consideration of the appeal since it best describes the proposed development in precise and concise terms.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal on the character and appearance of the area;
 - whether the proposal would provide adequate living conditions for future occupiers of the scheme, with particular reference to sunlight, daylight, and outlook; and
 - if the proposal would be inappropriate development, 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 it.

Reasons

Whether Inappropriate Development

4. The National Planning Policy Framework (the Framework) establishes that the construction of new buildings within the Green Belt is inappropriate. There is a closed list of exceptions to this in paragraph 149 of the Framework. One of which relates to limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development (paragraph 149 g)). Policy CS 1 of the Core Strategy (adopted 2009), refers to the provisions of PPG2 'Green Belts', which has been superseded by the Framework, which is the most up-to-date expression of national Green Belt policy and so my assessment under this main issue has been made in relation to the Framework.
5. Following appeal decision Ref APP/C3620/W/20/3257242 it is common ground between the main parties that the appeal site constitutes previously developed land. Taking account of the reasoning in that appeal decision, and my own observations, I concur with this assessment. As such, it is necessary to consider whether the proposal would have a greater impact on the openness of the Green Belt than the existing development.
6. The Framework denotes openness as an essential characteristic of the Green Belt. The openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
7. The site is located at the end of a run of residential properties. Its largely undeveloped nature provides a pleasing introduction to the more wooded area which is served by the public footpath which lies adjacent to the site. As such, its open aspect adds to the general feeling of spaciousness and thus openness which prevails in this semi-rural location.
8. The proposed dwelling would be partially sunken into the ground, with the ridge of the roof almost equalling the maximum height of the fencing. Hence, only the rooflights would be visible above the fencing. Accordingly, the proposed dwelling would be almost completely invisible from public vantage points. The fencing would also effectively screen the parking and hardstanding area to the front of the plot, and an automated gated access system would be used (which could be secured via a planning condition), which would ensure that views into the site are minimised from the private road. All this means that the proposal's impact on the openness of the Green Belt in purely visual terms would be very limited.
9. Nevertheless, a proportion of the proposed dwelling would be above ground level, and it would spread across a large area within the appeal site, thereby reducing the openness of the Green Belt in spatial terms. It is recognised that the site currently forms part of the curtilage of The Warren, and that it is used for domestic and parking purposes, but the proposal would involve the introduction of a separate, and potentially family-sized, household. As such, a range of further non-permanent features, including parked cars, and additional comings and goings and residential paraphernalia would likely accrue on site.

10. The physical size of the proposed dwelling, and the likely increase in the intensity of the use of the plot would significantly contrast with the predominantly open and relatively undisturbed nature of the site as it currently stands. Therefore, in spatial terms the proposal would have a greater impact on the openness of the Green Belt than the existing development. Consequently, it would conflict with paragraph 149 g) of the Framework. The proposal would therefore constitute inappropriate development in the Green Belt for the purposes of the Framework. Inappropriate development is, by definition, harmful to the Green Belt.

Character and Appearance

11. The site is situated on a private road which consists of a row of several detached 2-storey properties, near the M25. Due to the scale of the properties, their similar positions set-back from the road behind amply-sized parking areas, and the consistent building line, the road has a clearly-defined sense of place as a fairly secluded residential street in a semi-rural setting.
12. As mentioned under the first main issue, above, the proposed dwelling would be almost completely invisible from public vantage points, as would any parked cars. The design of the proposed dwelling would be considerably at odds with many of the nearby properties but considering the overall design ethos which involves the creation of a basement-level dwelling, I do not find this aspect to be intrinsically objectionable. Moreover, the proposed soft landscaping would be acceptable for the site in its fairly verdant context. In this regard, I find that the proposal would comply with Policy ENV24 of the Mole Valley Local Plan (adopted 2000) (Local Plan) which provides that, amongst other things, development will not be permitted where it would result in a cramped appearance having regard to the general space around buildings in the locality.
13. I am mindful that, in general, the character of an area is not only composed of its outward visible qualities, but also how it functions, how it is used, and how it feels. In this regard, the presence of the access gates, and the introduction of greater comings and goings and associated activity that comes from a new household would mean that the usage of the site by a separate household would be apparent. Indeed, that the intended future occupiers of the proposal would be entering through access gates to a partially submerged dwelling would itself be incongruous with the established situation in the locality, where residents commonly enter their properties via above-ground entrance points.
14. Considering the notable consistency of uses and activity that exists on the private road, as described above, the usage of the proposed partially submerged dwelling by the intended future occupiers would be especially noticeable and unusual in its context. Thus, the proposal would undermine the established sense of place in this location.
15. I therefore find that the proposal would have an unacceptable and harmful effect on the character of the area. It would conflict with Policy CS 14 of the Core Strategy which provides that, amongst other things, all new development must respect and enhance the character of the area in which it is proposed whilst making the best possible use of the land available, and with Policies ENV22 and ENV23 of the Local Plan which collectively provide that, amongst other things, development will normally be permitted where it respects its setting. The proposal would also conflict with the Framework which provides

that, amongst other things, planning decisions should ensure that developments are sympathetic to local character.

Living Conditions

16. The proposal was amended at application stage, to raise the proposed dwelling so that the ridge of the roof would almost equal the maximum height of the fencing. Due to The Warren being positioned to the north of the site, the path of the sun, and that the roof lanterns would be positioned above the fencing, the proposed dwelling would receive adequate levels of sunlight. Although not ideal due to the bank of trees to the south of the site, there would be sufficient separation between the below ground level windows and the front door, and the southern boundary to the site and the parking area, such that the dwelling and the courtyard would also receive adequate levels of daylight.
17. Users of the courtyard around the proposed dwelling would likely experience a perception of enclosure due to it being sunken into the ground, and the presence of the fencing and the bank of trees to the south of the site. Nevertheless, the amount and shape of the proposed private amenity space would be adequate, and considering that this is not a densely built-up area, a moderate air of spaciousness would persist. Consequently, the proposal would be acceptable with respect to outlook.
18. I therefore find that the proposal would provide adequate living conditions for future occupiers of the scheme, with particular reference to sunlight, daylight, and outlook. The proposal would comply with Policy ENV22 of the Local Plan which provides that, amongst other things, a design and layout will be required which does not significantly harm the amenities of the occupiers of neighbouring properties by reason of its overshadowing or overpowering effect. The proposal would also comply with the Framework, which provides that, amongst other things, planning decisions should ensure that developments create places with a high standard of amenity for future users.

Other Considerations

19. The proposed dwelling would be located close to a range of services, facilities, and employment opportunities, and it is likely that the future occupiers would not be dependent on private vehicles to access these. The future occupiers would be likely to use those services and facilities, thereby assisting their vitality. The proposal would provide working-from-home facilities and broadband access, with options for a zero-carbon lifestyle, including by way of the use of insulated concrete. Renewable energy sources would be used, including solar panels and air source heat pumps. Electric vehicle charging points could be installed. Planning conditions could be used to secure these matters, as necessary. Nevertheless, as all these matters merely denote compliance with the development plan and are a function of the site's location, collectively therefore, they have been given limited weight.
20. The submitted evidence demonstrates that the proposal would contribute to the enhancement of biodiversity in the local area, including by way of the provision of trees and a green roof. Moreover, the site is located in a pleasant area which may assist with the health and well-being of future occupiers. However, considering the fairly small size of the site and the number of occupiers that would likely reside there, collectively these matters have been given limited weight.

21. The proposal would contribute to housing choice and mix locally in, evidently, a housing undersupply situation. Given that the proposed development would only provide 1 dwelling however, I afford this limited weight.
22. The proposal is envisaged to be a self-build plot, and according to the appellant, an individual has already been identified. Whilst the appellant has provided little evidence to substantiate the demand for self-build development, I have no reason to doubt their assertions that demand exists. Paragraph 62 of the Framework supports self-build development and accordingly I have given this consideration moderate weight in favour of the proposal.

Other Matters

23. The appellant has engaged in constructive dialogue with the Council, including by way of amending the proposals at application stage, and through previous planning applications. However, in terms of the planning merits of this appeal, this is a neutral matter, which does not weigh in favour of the proposal.

Balancing of Considerations

24. Whilst I have found the proposal to be acceptable in terms of the living conditions for future occupiers of the scheme, this is a lack of harm which would, by definition, be incapable of weighing against the harm I have found in relation to the inappropriateness of the proposed development in Green Belt terms, how it would unacceptably reduce the openness of the Green Belt in spatial terms, and the harm I have identified in relation to the character of the area.
25. The Framework makes it clear at paragraph 148 that substantial weight is given to any harm to the Green Belt. It establishes that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
26. Cumulatively, I attach no more than moderate weight to the benefits of the proposed development which make up the other considerations. As such, the other considerations do not clearly outweigh the harm to the Green Belt and the character of the area. Consequently, the very special circumstances necessary to justify the development do not exist. The proposed development would not therefore accord with the Green Belt aims of Policy CS 1 of the Core Strategy, or the Framework, as set out above.
27. The lack of a 5 year housing supply means that the policies which are most important for determining the proposal are out-of-date in accordance with paragraph 11 d) of the Framework. In particular, Policy CS 1 of the Core Strategy, amongst other policies, must be considered to be out-of-date. However, part i. of paragraph 11 d) clarifies that permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance, including Green Belt, provide a clear reason for refusing the development. As I have explained, there would be harms to the Green Belt that would not be clearly outweighed. This provides a clear reason for refusing the development. Therefore, the proposal would not benefit from the presumption in favour of sustainable development in this instance.

Conclusion

28. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

Alexander O'Doherty

INSPECTOR