
Appeal Decision

Site visit made on 8 February 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Appeal Ref: APP/A3655/W/21/3277924

233 Saunders Lane, Mayford, Woking GU22 0NU

- 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 Mr R Mensa-Annan against Woking Borough Council.
 - The application Ref PLAN/2021/0182, is dated 15 February 2021.
 - The development proposed is the redevelopment of the site to provide a bungalow with temporary accommodation during construction.
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Decision

1. The appeal is dismissed and planning permission for the redevelopment of the site to provide a bungalow with temporary accommodation during construction is refused.

Preliminary Matters

2. The appellants have provided a signed Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990 dated 25 January 2022. This includes an obligation to provide a financial contribution of £985 (index linked) towards Strategic Access Management and Monitoring (SAMM) of the Thames Basin Heaths Special Protection Area. I shall consider the planning obligation later in this decision.

Main Issues

3. The appeal is made against the Council's failure to give notice of their decision within the prescribed period. However, it is clear from the Council's submissions that had they been in a position to make the decision, they would have refused permission for three main reasons. I have based the main issues of my determination on those areas of dispute between the main parties.
4. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, and;
 - The effect of the proposal on the character and appearance of the area, and;
 - The effect of the proposal on the Thames Basin Heaths Special Protection Area (SPA), and;

- If found to 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 required to justify the proposal.

Reasons

Whether inappropriate development

5. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open as the essential characteristics of Green Belts are their openness and their permanence.
6. The construction of new buildings within the Green Belt is inappropriate with the exception of the types of development listed in Paragraph 149 of the Framework. The appellant contends that the proposal would fall within the remit of sub paragraph 149 g) which allows for the limited infilling or the partial or complete redevelopment of previously developed land. However, there are caveats to paragraph 149 g), one of which is that the development should not have a greater impact on the openness of the Green Belt than the existing development.
7. Policy CS6 of the Woking Core Strategy, October 2012 (CS) and policy DM13 of the Development Management Policies Development Plan Document, October 2016 (DMP) both seek to prevent harmful development in the Green Belt. They generally resist development for new buildings in the Green Belt save for development that accords with the exceptions in the Framework.
8. There is no dispute between the parties that the appeal site constitutes previously developed land¹ as defined in the Framework. However, they disagree as to whether the proposed development would have a greater impact on the openness of the Green Belt than the existing buildings at the site. Planning Practice Guidance² confirms that openness is capable of having both spatial and visual aspects, which is broadly consistent with the case law that is brought to my attention³. Essentially, this is a matter that requires the exercise of judgement.
9. Within the appeal site there are two single storey buildings comprising a stable block and storage building. They have a combined footprint of approximately 185m² and a combined volume of about 576m³. As such, the amount of built form within the appeal site⁴ itself is limited. Moreover, the two structures are positioned close together in a line tight to the western boundary of the site. I observed that even with a considerable area of hardstanding, the site is generally open.
10. The proposal would remove those buildings but introduce a detached dwelling of approximately 632m³ in volume. I have been provided with various comparative measurements of the existing and proposed structures. Overall, although there would be a marginal decrease in footprint, the proposed dwelling would have a greater volume than both existing buildings and would

¹ Council's Delegation Report, page 4

² Paragraph :001 Reference ID: 64-001-20190722

³ Appendix 7 & Paragraph 5.3, Appellant's Amplification of Grounds of Appeal

⁴ Red line on location plan, drawing no, 19-J2718-LP01

be higher than either. Furthermore, despite some overlap with the position of the present structures, the proposed dwelling would be sited further away from the western boundary and would encroach markedly more to the east by comparison. This would result in a more obvious presence of built form across the site which would exacerbate the impact of the increased size on the sense of openness.

11. In addition, the proposed dwelling would be likely to have associated domestic paraphernalia, lighting, boundary treatments, parking and activity. The proposed site plan⁵ indicates that the dwelling would benefit from considerable grounds, only part of which is indicated as having planning permission⁶ to function as the garden for 229 Saunders Lane. Having regard to the floorplan and fenestration proposed, large areas of glazing would face and open southwards from the principal living spaces of the dwelling. Consequently, it is likely that the most intensive areas of the grounds used for sitting out would be to the south of the building rather than the approved garden area. Hence, it is more likely that seating, patio areas and related equipment would be located here.
12. In any event, the relationship of the highlighted garden area on drawing 19-J2718-02 is somewhat removed from the main dwelling at No.229. On that basis it augments the existing generous rear garden at that property. In contrast to the appeal dwelling, it would be less likely to represent the primary domestic garden area. My observations of the grassed area reinforce this impression, as although there is a pedestrian gate from No.229, due to its configuration and presence of a boundary hedgerow it reads as a separate parcel to the rear garden land of No.229. Therefore, its proximity to the proposed dwelling would be likely to lead to more intensive use and a more obvious domestic appearance than might otherwise have been the case.
13. Taking these factors together, the proposal would result in a development that would have a greater impact on the openness of the Green Belt than the existing development and as such, would not fall within the remit of paragraph 149 g) of the Framework. Given the relatively minor scale of the development proposal, the degree of harm to the openness of the Green Belt would be limited. Nevertheless, given the rural context of the surroundings, it would represent the encroachment of additional built form into the countryside, contrary to one of the purposes of the Green Belt listed in paragraph 138 of the Framework.
14. The evidence does not show that the appeal proposal would comprise any of the other exceptions for new buildings listed within paragraph 149 of the Framework. Consequently, the proposal would constitute inappropriate development in the Green Belt, to which I must attach substantial weight.

Character and appearance

15. The section of Saunders Lane near to the appeal site has a ribbon of residential development along its southern side. Whilst there are some exceptions⁷, for the most part, this is single plot in depth and faces towards the road. Despite a variety of architectural style, most dwellings are detached with a moderate set

⁵ Drawing no. 19-J2718-02

⁶ Reference PLAN/2018/0734

⁷ Paragraph 5.12, Appellant's Amplification of Grounds of Appeal

back from the road and have long rear gardens. The sporadic presence of domestic outbuildings in gardens behind the row of main dwellings tapers out to agricultural fields or paddocks behind. This broadly ordered pattern of development combined with the presence of woodland, trees and hedgerows nearby, results in a prevailing spacious, countryside character to the area.

16. The appeal site comprises of generally open land with two single storey buildings. They have a functional appearance consistent with a rural working environment. The distance from Saunders Lane and close siting of the buildings to the hedgerow along the western boundary, together with their limited height softens and restricts their impact on the wider area. Overall, the site has a low-key rural character and forms part of the transition between the residential development along Saunders Lane and the countryside to the south that can be appreciated from the nearby public right of way.
17. The siting of the proposed dwelling would markedly depart from the underlying pattern of residential development along Saunders Lane. Firstly, it would be considerably further set back with no road frontage by comparison to the majority of dwellings. In addition, it would be behind existing dwellings thereby departing from the single plot grain of development generally established. Its siting would disrupt the gradual tapering of domestic buildings from the principal domestic accommodation relatively near to the road, through more modest or functional ancillary domestic buildings towards the open countryside.
18. Notwithstanding that the proposal takes some design cues and detailing from traditional rural buildings, it would nevertheless have a footprint and overall form that would be undeniably domestic in character. Its larger scale and siting further away from the western boundary in comparison to the existing buildings would give it greater prominence when seen from the rear of nearby residences. Glimpses are also likely to be possible from the nearby public right of way as well as between gaps in houses along Saunders Lane. Due to the large areas of glazing proposed, this would especially be the case when the property was internally lit.
19. Furthermore, as outlined in the first main issue, the generous grounds are likely to accommodate boundaries, seating, play equipment and similar objects which, in addition to more ornamental planting would emphasise the domestic nature of the development to the detriment of the surrounding rural character.
20. Cumulatively, these factors would considerably diminish the rural character and spaciousness currently experienced at the appeal site. Consequently, the proposal would fail to make a positive contribution to enriching the site or the local area contrary to the overarching design principles set out in the Woking Design Supplementary Planning Document, February 2015.
21. Accordingly, I find that the proposal would have a harmful impact upon the rural character and appearance of the area. Therefore, it would conflict with policies CS21 and CS24 of the CS, which amongst other matters, expect all development to make a positive contribution to the character of the area.

SPA

22. The appeal site is located within 5km of the SPA, a habitat recognised under the Conservation of Habitats and Species Regulations 2017 as being of

international importance for rare and vulnerable species of birds. Caselaw⁸ requires the decision maker, when considering the effect that a proposal may have on such a European Site, to consider mitigation within an Appropriate Assessment rather than at screening stage.

23. In the absence of mitigation measures and using a precautionary approach, given the proximity to the SPA it is reasonable to suppose that future residents of the development would potentially visit the Site for recreational purposes and dog-walking. Intensification of such activities would be likely to cause disturbance to the birds and their habitat. Notwithstanding that the future number of residents generated by the appeal proposal would be relatively low, I am required to consider the effect of the proposal both individually and in combination with other projects. As such, there is a risk of a significant effect on the internationally important interest features of the SPA.
24. Policy CS8 of the CS requires new residential development which is likely to have a significant effect on the SPA to demonstrate that adequate mitigation measures are put in place to avoid any potential adverse effects. The Thames Basin Heaths Special Protection Area Avoidance Strategy 2010-2015 (the Strategy) expands upon the Council's approach to mitigating the adverse effects of new housing development through two main avoidance measures. This includes the provision of Suitable Alternative Natural Greenspace (SANG) and SAMM, and a proportional tariff is included for financial contributions towards both elements.
25. In relation to SAMM, the submitted UU would secure a financial contribution of £985 (index linked) to be paid prior to the commencement of development which both parties indicate aligns with the tariff in the Strategy, and I have no basis to find otherwise. In respect of this avoidance measure, I am satisfied that the obligation would be necessary to make the development acceptable in planning terms, is directly related to the development and would be fairly and reasonably related in scale and kind to the development. Therefore, it meets the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations).
26. Nevertheless, I have concerns regarding the other main avoidance measure. The Council suggest that there would be sufficient capacity to provide SANG at Heather Farm to mitigate the impacts of the development. It is stated that the SANG element would be encompassed within the Community Infrastructure Levy (CIL) for the development and goes on to say that CIL would be payable in the event of planning permission being granted⁹. However, the submitted application includes a CIL self-build exemption claim form which casts considerable doubt on this assumption. Consequently, based on the information before me, it is not certain that the proposal would make an appropriate contribution towards the provision of SANG that would accord with the Strategy. Given that I have other substantive concerns regarding the proposal, I have not sought further clarification from the parties on this point as it would be unlikely to be determinative to my decision.
27. Accordingly, on the basis of the information presented, it is not clearly shown that suitable avoidance measures would be secured to adequately mitigate the impacts of the proposal. Therefore, the risk of a significant effect on the

⁸ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

⁹ Council's Delegation report p10

internationally important interest features of the SPA cannot be ruled out. It follows that the proposal would conflict with policy CS8 of the CS and saved policy NRM6 of the South East Plan, May 2009 which, amongst other matters, seeks to prevent development which would give rise to adverse effects on the SPA.

Other considerations

28. The proposal would provide an additional dwelling towards the overall supply which the appellant confirms would be a self-build dwelling. There are statutory duties imposed on local planning authorities to establish local registers of self/custom-builders who wish to acquire suitable land to build their own home. They must also have regard to the local register when exercising planning functions. Additionally, subject to certain exemptions, there is a duty to grant planning permission whereby authorities must give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period.
29. I am provided with an extract of the Council's Annual Monitoring Report 2019-2020¹⁰ whereby the number of people/groups entered on the self-build register considerably exceeds the number of dwellings granted permission with self-build CIL exemption certificates. Based on the limited evidence before me, I am not assured that sufficient self-build plots are being provided to meet the need. Hence, there is some doubt as to whether the Council has met its duty in this regard. Cognisant of the statutory duties, I attribute the provision of an additional self-build house moderate positive weight.
30. In addition, there would be limited economic benefits arising from the construction of the dwelling and the future activities of its occupants. These attract a commensurate amount of weight.
31. It is drawn to my attention that the Council have not raised objections to the proposal on the basis of highway safety, the loss of the commercial use of the site, the living conditions of nearby residents nor in relation to the significance of non-designated heritage assets. Be that as it may, the absence of harm in respect of these factors does not amount to a positive benefit of the proposal as they would be required in any event to satisfy other development plan policies. Accordingly, these are neutral factors in the overall balance.
32. Reference is made to improvements having been made to the proposal following pre-application advice. Nevertheless, this would not amount to a benefit of the scheme before me, which I have assessed on its own merits.
33. The appellant considers that the development plan policy relating to self-build housing is out of date and as such the 'tilted balance' in paragraph 11 of the Framework should apply in this case. Even if I were to accept the appellant's position on this point, the Framework states that the presumption in favour of sustainable development means that planning permission should be granted unless firstly, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. Footnote 7 to paragraph 11 confirms that this includes policies relating to land designated as Green Belt and habitat sites.

¹⁰ Appendix 5, Appellant's Amplification of Grounds of Appeal

34. For the reasons already outlined above, I have found the proposal would amount to inappropriate development in the Green Belt and furthermore, the proposal would be likely to have a significant effect on the SPA. It is clear from this footnote and paragraph 182 of the Framework that the presumption in favour of sustainable development does not apply in these circumstances. Moreover, the policies in the Framework relating to the protection of such areas provide a clear reason for refusing the proposal. As such, the tilted balance in paragraph 11d)(ii) does not apply.

Green Belt Balance and Conclusion

35. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework states 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. It further states that substantial weight should be given to any harm to the Green Belt. Therefore, in this case substantial weight is given to the harm to the Green Belt arising from the inappropriateness of the appeal proposal and the limited harm to openness. In addition, significant weight is given to the harm to the character and appearance of the area and likely effect on the SPA.
36. Balanced against that is the moderate weight attributed to the cumulative benefits arising from the provision of an additional self-build dwelling and its associated economic benefits.
37. Therefore, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
38. Accordingly, the proposal would also be contrary to policies CS6 of the CS and DM13 of the DMP which seek to protect the Green Belt from inappropriate development in accordance with national policy set out in the Framework.
39. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹¹. No compelling reasons have been shown to justify my determining the development other than in accordance with the adopted development plan.
40. For the reasons given above I conclude that the appeal should be dismissed and planning permission refused.

Helen O'Connor

Inspector

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.