



Appeal Decision

Site visit made on 19 October 2022

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/D3640/W/21/3289842

Plot being land to the north east of Hatton Hill, Squirrels Nest Road, Windlesham GU20 6AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Joseph & Oliver de Rozarieux & Comberti against the decision of Surrey Heath Borough Council.
 - The application Ref 21/0754/OOU, dated 5 July 2021, was refused by notice dated 24 September 2021.
 - The development proposed is a single detached dwellinghouse (Use Class C3a).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Joseph & Oliver de Rozarieux & Comberti against Surrey Heath Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. Outline planning permission is sought but all matters reserved. I have determined the appeal on this basis.
4. A Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted which includes mechanisms to contribute towards mitigation of the effects of the proposed development on the Thames Basin Heath Special Protection Area (TBHSPA), towards traffic measures in Windlesham, to secure the dwelling as self-build housing, and assure fundamental design principles. I will return to these matters later in this decision.

Main Issues

5. 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.
 - The effect of the proposal on the openness of the Green Belt.
 - The effect of the proposed development on biodiversity

- The effect of the proposal on the character and appearance of the area with particular regard to trees
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal’.

Reasons

Whether the proposal is inappropriate development

6. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; and the essential characteristics of Green Belts are their openness and their permanence. The Framework goes on to state that inappropriate development is harmful to the Green Belt. The construction of new buildings in the Green Belt should be regarded as inappropriate, and thus should be approved only if very special circumstances exist, unless they come within one of the categories in the closed list of exceptions in paragraph 149 of the Framework. Of relevance to this appeal ‘limited infilling in villages’ is listed as an exception in paragraph 149.
7. The appeal site is not within the settlement area (SA) of Windlesham for the purposes of the development plan. However, this does not necessarily define the extent of the village for the purposes of paragraph 149 of the Framework, and therefore I have taken into account the situation on the ground. This is similar to the approach taken in other appeals brought to my attention¹, albeit I have taken into account the site specific circumstances for this appeal.
8. Squirrels Nest Road leads on to and shares features with Hatton Hill, which is a narrow road, characterised by mainly substantial dwellings set in generous plots. In this area, generally, large gardens with mature planting result in notable gaps between buildings and a verdant sense of spaciousness. There is a pavement along Kennel Lane and to the southern part of Hatton Hill which terminates just beyond Fernways School. However, the appeal site is just past this and therefore it is not well connected to the nearby shops and services by foot. These features give the area a rural quality.
9. Travelling from the appeal site in a southerly direction, beyond the end of Hatton Hill there is then an area of open space on both sides of Kennel Lane. Part of which is the publicly accessible open space at the Field of Remembrance. After this is the more dense development around the Pound Lane junction. The parade of shops and services at Chertsey Road and Updown Hill lie further along this route. To the north of the appeal site, the spacious rural pattern of development continues along Hatton Hill until reaching the area identified as a separate SA beyond Snows Ride. This change in character provides an evident separation between these areas.
10. There are a number of services which are outside the settlement area of Windlesham as set by the development plan. These include the Windlesham Club and Theatre along Kennel Lane, close to the junction with Hatton Hill and I have considered the proximity of these facilities to the appeal site. Albeit, as set out above I acknowledge that the SA may not be an appropriate definition of a village in all circumstances.

¹ APP/B1930/W/19/322543, APP/K0425/W/17/3183403

11. I have also taken into account website and estate agent descriptions of properties on Hatton Hill, the postcode area in which they fall and land registry records. I also understand that the appeal site was originally part of Woodside, which were nursery gardens historically associated with Windlesham.
12. Taking all the above into account, I find that the open space along Kennel Lane provides a physical separation and identifiable change in character between the rural character of Hatton Hill, including the appeal site, and the more densely developed, walkable village area. As such the appeal site is not in a village. Whilst Hatton Hill falls within the surroundings of Windlesham, nevertheless this wider area is not the same as being in a village for the purposes of paragraph 149 of the Framework.
13. Planning permission was granted for dwellings opposite the site². However, I understand that this was on the basis that they were inappropriate in the Green Belt but that very special circumstances outweighed this harm. As such this does not persuade me that the appeal site is in a village.
14. Consequently, the proposal would represent inappropriate development in the Green Belt.

Openness

15. Openness has both spatial and visual dimensions. The proposal would introduce a substantial building where currently there is no development and therefore there would be harm to spatial openness. Furthermore, the proposed development would be seen in private views from neighbouring properties and gardens. Therefore, in terms of visual intrusion, the proposed development would have a greater impact on the openness of the Green Belt than existing.
16. Consequently, for the reasons above, the proposed development would be harmful to the openness of the Green Belt. Therefore, it would be contrary to the Framework.

Biodiversity

17. The Ecological Appraisal identifies that suitable habitat for reptile species such as slow worm is present across the site and it is recommended that further reptile surveys are conducted to ascertain the species and numbers present to inform a mitigation scheme for reptiles. Therefore, on the basis of the evidence submitted, there is a reasonable likelihood that protected species may be present at the site.
18. Options of various forms of mitigation are suggested. However, the presence or otherwise of protected species has not been established, nor the extent that they may be affected by the proposed development. Therefore, I cannot conclude that such mitigation would be effective and that there would not be a negative effect on reptiles.
19. A condition is suggested that an updated Landscape and Ecological Management Plan should be submitted. National guidance on this matter is clear. Circular 06/2005 advises it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise

² LPA ref 16/12114, 16/114/1 and 17/0864

all relevant material considerations may not have been taken into account. It goes on to say that the need to undertake further ecological surveys should only be left to coverage under planning conditions in exceptional circumstances. However, this development of a single dwelling does not represent an exceptional circumstance so that further surveys should be covered by condition.

20. The proposed development would provide biodiversity benefits in terms of cleaning up contamination from historic horticultural uses, eradicating invasive and ecologically damaging non-native species. As well as proposed landscaping which would include fruit trees, a wildlife pond and bee hives. However, I am not satisfied that these would be of such magnitude to outweigh the harm to the protected species identified above.
21. Therefore, the proposed development would be contrary to Policy CP14A of the the Surrey Heath Core Strategy and Development Management Policies 2011-2028 (2012) (CSDMP) which states, in part, the development that results in harm to features of interest for biodiversity will not be permitted. As well as Circular 06/2005, as set out above and The Wildlife and Countryside Act 1981 which provides protection to the species of birds, animals and plants listed in the schedules to the Act (including slow worm) and also general protections for all wild species of birds, animals and plants.

Character and Appearance – trees

22. The appeal site and surroundings are characterised by large grounds associated with nearby properties. These include mature trees, including those on the boundary of the appeal site. Whilst these are not protected by Tree Preservation Orders, nevertheless they create a pleasant verdant, landscaped character to the surroundings.
23. There is a single entrance to the site and so, although the scheme is in outline it is reasonable to assume that a driveway will be required from this point. This is likely to result in some hardstanding within the root protection zone (RPZ) of the Oak tree on the boundary with Squirrels (tree T2) as a minimum, albeit the extent of any incursion is not known. Any hardsurfacing with the RPZ would be low invasive surfacing incorporating a cellular confinement system. However, the details of this system and how it would work on this site that I am provided with are also limited. Furthermore, utilities are likely to be within the RPZ of the trees, although no detail is provided at this stage. As such I have inadequate assurances that, in particular tree T2, could be retained as part of this development.
24. As such, on the basis of the evidence before me it is likely that the proposed development would result in the loss of trees which make a positive contribution to the character and appearance of the area.
25. A condition in this regard requiring the submission of an updated Arboricultural Impact Assessment and Tree Protection Plan has been put to me. These would provide further detail as to the extent of any harm and mitigation measures. However, the driveway and utilities are an essential part of development on this site, and therefore this additional information would not prevent the loss of trees.

26. Consequently, the proposed development would have a harmful effect on the character and appearance with particular regard to trees. This would be contrary to Policy DM9 of (CSDMP) which requires that development must respect the natural character of the environment and protect trees worthy of retention.

Other Considerations

Self-Build Housing

27. The Framework supports that the needs of groups with specific housing requirements are addressed, such as people wishing to commission or build their own homes. the Self Build and Custom Housebuilding Act 2015, requires local authorities to give enough suitable development permissions to meet the identified demand. It is put to me that against a register of 417 applicants, 18 consents have been granted. The Council has not rebutted this and it would therefore appear that there is a significant undersupply in provision.
28. Other Appeal decisions where self-build housing has been allowed have been put to me³. However all but one of these are not in the Green Belt. Also, apart from one scheme which was for two dwellings, the majority of the developments are of a much larger scale than that before me now for between 9-30 homes. The appeal scheme in the Green Belt was for up to 100 homes, 10% of which would be self-build. As such, due to its size this scheme is notably different to that before me now. Nevertheless, in common with these Inspectors, I recognise the importance of self-build housing, and will go on to balance this against the harm identified for this specific proposal.
29. The UU would secure the provision of a self-build plot at this site and will make a positive contribution to this undersupply. This is an important benefit of the proposed development to which I attach substantial weight. However, given the size of the development, the contribution of a single self-build dwelling is limited in its scale.

30. Fundamental Design Principals

31. The UU sets out a list of fundamental design principals including features for energy efficiency, the use of renewable energy, low water usage, and suitability for home working. They also commit to the building being accessible. As well as using modular construction for speed and complexity. These principals are positive. However, at this stage the method and detail of the incorporation of these features is not known and the UU does not secure measurable targets. Therefore, as the detail is yet to be secured, the extent of any benefit in this regard is limited at this stage.

Highways

32. The proposed development would be for a single dwelling and therefore the vehicle movements generated would be likely to be low. A suitable and safe access could be provided to Squirrels Nest Road. As such the proposed development would not be harmful to highway safety or the operation of the highway network.

³ APP/G2435/W/18/3214451, APP/W0530/W/19/3230103, APP/G2435/W/18/3214451, APP/W0530/W/19/3230103, APP/G1630/W/20/3250835, APP/H1840/W/19/3241879, APP/B1930/W/20/3265925, APP/D2320/W/20/3247136

33. The UU provides a Village Traffic Contribution towards the promotion consultation and implementation of speed and/or weight restriction measures directional warning and/or safety signage and or traffic management measures on Hatton Hill and other parts of the Village. However, given the lack of harm in this regard, such a contribution would not be necessary to make the development acceptable in planning terms. As such I afford no weight to this part of the planning obligation in determining the appeal.

Other Matters

34. The proposed development would create a new family home in a somewhat accessible location on vacant and underused urban land which could be implemented quickly. However, the proposal is for a single dwelling and therefore the benefits in this regard would be small. There would also be economic benefits during construction with an aspiration that employment during construction would be local. However, any benefit in this regard would be temporary.

Fallback

35. The site could be used for seasonal camping for 28 days without the need for planning permission. Any operation would not include the permanent physical changes proposed as part of this appeal scheme, and any effects would be highly time limited. Therefore, this would be less harmful than the appeal scheme. As such, this would not justify the development proposed.

Green Belt Balance

36. The Government attaches great importance to Green Belts. Paragraph 148 of the Framework states that substantial weight should be given to any harm to the Green Belt. I have found harm to the Green Belt by reason of the proposed development's inappropriateness and effect on openness. As well as the public and permanent harm to the character and appearance of the area through the loss of trees and harm to biodiversity.
37. The considerations advanced by the appellant include the provision of a new family housing unit, which would be self-build and would be constructed using low carbon design principles. I attach significant weight to the provision of a self-build housing unit, nevertheless due to the scale of the development the benefits in this regard are only modest. Therefore, the other considerations in this case, even when considered together, do not clearly outweigh the harm that I have identified.
38. The very special circumstances necessary to justify the development therefore do not exist. Consequently, the proposed development would conflict with paragraph 148 of the Framework the aims of which are set out above.

Housing Land Supply and associated implications

39. The Council's decision on the application was based on the fact that it could not demonstrate a 5 year housing land supply. However, the evidence submitted with the appeal states that the Strategic Land Availability Assessment 2021 dated February 2022 concludes that Surrey Heath can currently demonstrate a 7.20 year housing land supply. Nevertheless, even if paragraph 11(d) of the Framework were to be engaged, the application of policies relating to land designated as Green Belt provides a clear reason for refusing the development

proposed⁴. Consequently, the presumption in favour of sustainable development would not apply in this case.

Thames Basin Heaths Special Protection Area (TBHSPA)

40. The TBHSPA is a habitats site that has a high level of protection. It is designated because of the presence of breeding populations of Dartford Warblers, Woodlarks and Nightjars. The Council has a strategy that seeks to mitigate the impacts on the TBHSPA sites arising from human activity such as recreational activity including dog walking, domestic cats, flytipping and arson. The appellant has provided mitigation in the form of a Strategic Access Management and Monitoring Contribution. Notwithstanding this, there is no need to consider the implications of the proposal on the protected site because the scheme is unacceptable for other reasons.

Conclusion

41. The proposal would not accord with the development plan and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

H Miles

INSPECTOR

⁴ See Footnote 7 in the Framework