



Appeal Decision

Site visit made on 17 November 2022

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/C3620/W/22/3299083

Units 1-3, Hart Gardens, Dorking, Surrey RH4 1JT

- 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 Daniel Farrow against the decision of Mole Valley District Council.
 - The application Ref MO/2021/1553/PLA, dated 16 August 2021, was refused by notice dated 29 April 2022.
 - The development proposed is the erection of a building to provide a car-free development of 6 flats with associated amenity space and landscaping, following demolition of existing buildings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a car-free development of 6 flats with associated amenity space and landscaping, following demolition of existing buildings at Units 1-3, Hart Gardens, Dorking, Surrey RH4 1JT in accordance with the terms of the application, Ref MO/2021/1553/PLA, dated 16 August 2021, subject to conditions set out in the attached schedule.

Preliminary Matters

2. There have been prior approval and planning applications for residential use of the site in recent years, some refused, and others approved. There is an extant permission dated 2 September 2021 for the redevelopment of the site to provide 5 flats with 5 parking spaces (ref. MO/2021/0307).

Main Issues

3. The main issues are the effect of the proposal on neighbouring residents as a result of additional traffic movements and any additional on-street parking.

Reasons

4. The appeal relates to an L-shaped land parcel occupied by an industrial building with a forecourt for parking and servicing. Vehicular access to the site is from Hart Gardens, a cul-de-sac connecting with Hart Road to the north. A rear alleyway to the south of the site leads to High Street and the town centre and would be available for residents of the proposed building.
5. The Council's refusal reason relates to the effect of the development on the amenity of existing residents rather than on highway safety. The County Highway Authority has raised no objection to the proposed car free development subject to inclusion of a planning condition to preclude future occupiers being entitled to apply for a residents' parking permit.

6. Hart Gardens has a narrow carriageway with terraced houses built to the back of the footway to both sides. The footways are also narrow. Photographs in appeal documents show cars parked partly on footways to both sides of the road, constraining their use by pedestrians. The remaining carriageway width appears to be adequate for a vehicle to pass between the parked cars.
7. The proposal would generate traffic movements in relation to deliveries to the flats. However, there is no evidence before me that this would be more intense than traffic associated with the lawful joinery workshop use of the site which would have involved commercial vehicles. Indeed, the appellant's Transport Statement indicates there would be a 70% decrease in vehicular movements which would be a material benefit. Existing commercial vehicle parking permits at the site would also be extinguished. The current car free proposal would be likely to generate fewer vehicular movements than the extant permission which includes 5 parking spaces. Notwithstanding the limited width of the carriageway to Hart Gardens following kerbside parking, the net effect of traffic associated with the proposed flats would not be so intense as to significantly affect the amenity of existing residents.
8. Hart Gardens lies within Controlled Parking Zone J. This restricts on street parking to only permit holders on Mondays to Saturdays between 8am and 6pm. Therefore, there are not currently restrictions to on street parking in Hart Gardens in evenings, overnight or on Sundays. There are double yellow lines restricting parking by a bend in Hart Gardens and at the junction with Hart Road which has a wider carriageway, but otherwise on street parking is permitted in Hart Gardens.
9. The appellant comments that residents of Hart Gardens are parking illegally by partly parking on the footway with reference to Rules from the Highway Code and Highways and Road Traffic Acts. It would appear that such parking offenses are not currently being enforced. At the time of my site visit, all cars parked along Hart Gardens displayed parking permits relating to Zone J. If footway parking were to be enforced against to both sides of Hart Gardens, this would improve the width of the carriageway for traffic but result in considerable displacement of road side parking to elsewhere in Zone J with associated inconvenience to the residents of Hart Gardens and neighbouring roads. Moreover, traffic levels are light as this is a cul-de-sac. The expediency of enforcement of footway parking is a matter for the relevant authorities.
10. The proposed planning condition would exclude future residents at the development from obtaining a parking permit. It would not preclude occupiers from owning or hiring a car or from parking a car in Hart Gardens in evenings, overnight or on Sundays. Such parking would be likely to displace parking by existing residents and result in nuisance if this were to be a regular occurrence by several future occupiers. The issue of finding somewhere to park close to home can have significant effects on the quality of life of residents who live in areas experiencing high levels of parking demand, such as in Hart Gardens.
11. But it would be an impractical arrangement for future occupiers to constantly move a car before a period of unconstrained parking ends and potentially an expensive one too if the car is not moved and permit restrictions are enforced. The Wathen Road public car park near the appeal site can accommodate 104 long term car parking spaces. This and other public parking would provide a more practical solution for future occupiers choosing to keep a car.

12. Moreover, the proposal is planned as a car free development and would be attractive to prospective occupiers not owning a car. The site is in a sustainable location close to everyday services in the town centre and to public transport options for wider movement. It is possible that visitors to the site could choose to park in Hart Gardens during unconstrained hours resulting in displacement of existing residents' cars. But this would be similar for visitors to the extant permission for 5 flats should this be developed. The unconstrained parking hours within a controlled parking zone would generally be when overall parking demand is lower and capacity greater within the zone.
13. Policy ENV22 of the Mole Valley Local Plan (2000) covers general development control criteria but at section 2 relates to factors such as noise, traffic or other adverse environmental impacts that could significantly harm the amenities of occupiers of neighbouring properties. From the information before me, any harm arising from traffic or parking associated with the development would not result in harm that would clearly be significant.

Other considerations

14. The Council cannot currently demonstrate a five year housing land supply as required by the National Planning Policy Framework (the Framework). Its latest reported figure is only 2.9 years. The Council's latest Housing Delivery Test result is 70% of housing delivered against targets. In these circumstances, the presumption in favour of sustainable development set out at Paragraph 11 of the Framework is engaged. Whilst the site lies within the Dorking Conservation Area, the proposal has not been refused on heritage grounds. Location within a conservation area does not provide an exemption for application of the "*tilted balance*" set out at Paragraph 11(d) of the Framework. As such, permission should be granted for residential development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of doing so, when assessed against the policies of the Framework as a whole.
15. The appellant has referred to other recent permissions for car-free housing in or close to Dorking town centre in support of such a scheme at the appeal site. However, these mostly relate to developments of fewer dwellings and the Council reports on these schemes indicate locations where the demand for residents' street parking is not as acute as at Hart Gardens. The site closest to the appeal site at Farm Supplies, Ansell Road is for 7 units, but the Council did not include a condition restricting future occupiers from applying for a parking permit. The appellant has referred to appeal decisions at Elmbridge and Waverley (ref.s APP/K3605/W/19/3240173 and APP/R3650/W/20/3261553) at locations covered by the same highway authority in which conditions have been included to preclude the issue of parking permits to future occupiers. But the site circumstances and nature of the developments proposed differ from those at the appeal site. Each case has to be judged on its individual planning merits.

Planning balance

16. The proposal would result in social benefits through the provision of 6 additional dwellings. This would make a modest contribution to the Council's housing shortfall. Much of the District is covered by restrictive Green Belt policies making it important to take advantage of redevelopment sites within the built up area. The site is also in a sustainable location, very close to services and facilities in the town centre and with public transport options nearby.

17. A car free development at the site would result in environmental benefits in that it would accord with sustainable transport objectives and with aims to make effective use of land as set out in chapters 9 and 11 to the Framework. There would also be a reduction in traffic visiting the site compared with the present lawful industrial use of the site. Moderate weight can also be afforded to economic benefits arising from construction jobs, some local investment during building works and longer term expenditure in the local economy.
18. An argument against the proposal is that it would result in only one additional unit compared with the extant permission, and so would make little difference to housing supply. Also, as the extant permission includes 5 parking spaces, overspill parking would be less likely to occur reducing the probability of displacement of existing parking and its associated inconvenience for residents. But the extant permission does not include a condition on parking permits, so future occupiers of this scheme, should it be developed, would nonetheless be able to apply for a parking permit.
19. In my judgement, the effect of any on street parking arising from the current appeal proposal on the amenity of existing residents is not likely to be so regular or so extensive as to result in significant harm. The planning balance therefore lies in favour of granting permission. However, the planning condition to preclude future occupiers from obtaining parking permits would be necessary to the permission to prevent the harm from becoming significant. I am satisfied that such a condition would meet the tests for planning conditions set out at Paragraph 56 to the Framework.
20. The condition suggested in the appeal submissions provides a mechanism to ensure that future occupiers of the flats are excluded from benefiting from residents parking permits. But compliance with the condition would require prior submission of proof that the Traffic Regulation Orders (TRO) listing excluded properties have been amended. As the County Highway Authority have recommended granting permission subject to inclusion of the planning condition, there is a reasonable prospect that the TRO could be so amended within the time limit imposed by the permission, thereby enabling the development to proceed.

Other Matters

21. Some objections have been made on other grounds. The principle of the loss of employment land at the site and the design approach to the building have been accepted previously through previous decisions at the site.

Conditions

22. I have noted the planning conditions listed by the Council in the event that the appeal is allowed. Whilst I agree with these, I have revised some in the light of advice on planning conditions in Planning Practice Guidance.
23. In addition to the statutory condition to limit the lifespan of the permission, it is necessary to list the approved plans in the interest of certainty and to facilitate amendments, should this be expedient.
24. Several pre-commencement planning conditions are warranted. Firstly, the condition to preclude future occupiers from obtaining parking permits is necessary to mitigate risks to highway safety and to safeguard living conditions for residents near to the site through inappropriate parking. Secondly to ensure

appropriate archaeological investigations can take place prior to building operations. As there are likely to be contaminants at the site, a condition is needed in relation to monitoring and remediation of the land. Similarly, a sustainable drainage scheme needs to be examined prior to works commencing to ensure satisfactory site drainage.

25. Before development exceeds ground level, conditions are necessary to approve external materials and hard and soft landscape measures in the interests of a satisfactory appearance to the site. I have included the Council's suggested condition on carbon emissions to optimise the use of renewable energy. Finally, I have included a condition requiring provision of the approved refuse and recycling store and cycle store to ensure that the site operates as intended and in the interests of the amenity of the area.

Conclusion

26. The proposal would not result in significant adverse effects for neighbouring residents in relation to traffic movements and any additional on-street parking. The appeal should therefore be allowed subject to appropriate conditions.

Rory MacLeod

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Nos. A19008 A (S1) 01, A19019 A (S3) 08, A19019 A (S3) 09, A19019 A (S3) 10 and A19019 A (S3) 11 and location plan.
3. No development shall take place until arrangements shall have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have been approved in writing by the local planning authority. The approved scheme or agreement shall ensure that:
 - (a) following variations to the Surrey County Council Dorking Controlled Parking Zone in the District of Mole Valley (Consolidation of Waiting Restrictions and On Street Parking Places) Order 2014, or any Order revoking or re-enacting the Order, no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation);
 - (b) any occupiers of the approved development shall surrender any such permit wrongly issued or held, and
 - (c) measures are in place to communicate this requirement to future occupants of the proposed development, including their successors in title and any persons occupying the premises as a tenant or licensee.

- (d) Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby permitted continues.
4. No development, including demolition, shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved, in writing, by the local planning authority.
 5. Prior to the development hereby permitted commencing, a detailed scheme of assessment consisting of site reconnaissance, conceptual model, risk assessment and schedule of investigation shall be submitted to and approved in writing by the local planning authority. The scheme shall include consideration of asbestos. Before above ground development commences the scheme of assessment shall be carried out at such points and to such depth as the local planning authority may stipulate and laboratory results shall be provided as numeric values in accordance with the standards of Government Guidance for Land affected by Contamination. A scheme for decontamination and verification shall then be submitted to and agreed in writing by the local planning authority. The approved scheme shall be implemented before any part of the development hereby permitted is occupied.
 6. Prior to the development hereby permitted commencing, surface water drainage details shall be submitted for the approval in writing by the local planning authority. Such details shall include an assessment of the potential for the disposal of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework. The assessment shall provide information of the design storm period and intensity (typically a 1 in 100 year storm of 30 minutes duration with an allowance for climate change), the method employed to delay and control the surface water discharged from the site and the means to prevent pollution of the receiving groundwater and/or surface water. Where applicable, the details shall include infiltration tests, calculations and controlled discharge rates. If the development is to discharge water into the ground in any form, then a full BRE Digest 365 infiltration test (or falling head test for deep bore soakaways) shall also be submitted to the local planning authority prior to commencement of any works on site. The suitability of infiltration methods should be verified (i.e. possible contaminated ground). The approved drainage scheme shall be implemented prior to the first occupation of the development.
 7. No development shall commence above ground level until details of the materials to be used in the construction of the external surfaces of the development hereby permitted, including details of windows and rooflights, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 8. No development shall commence above ground level until details of the hard surfacing to be used within the site shall have been submitted to and approved in writing by the local planning authority. The details shall indicate either porous materials or the provision of a direct run-off from the hard surface to a permeable or porous area. All hard surfacing shall be carried out in accordance with the approved details, completed prior to the first occupation of the development hereby permitted and thereafter, permanently retained as such.

9. No development shall commence above ground level until details to reduce the carbon emissions of the predicted energy use of the development hereby permitted by at least 10% through the on-site installation and implementation of decentralised and renewable or low-carbon energy sources shall have been submitted to and approved by the local planning authority. The submitted details should demonstrate that the requirements of the condition can be met without impacting on either the number or the size of the approved rooflights. The approved details shall be implemented prior to the first occupation of the development.
10. No development shall commence above ground level until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include measures to deliver biodiversity net gains, such as bird or bat boxes and log piles, and incorporate the planting of native species of shrubs, herbaceous plants and areas to be turfed. The landscape scheme shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
11. The refuse and recycling storage facilities at the rear of the site and the cycle store at the front of the site, as shown on the approved drawings, shall be made available for use prior to the first occupation of the dwellings hereby permitted and, thereafter, shall be permanently retained as such.