



Appeal Decision

Site visit made on 26 July 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/L3625/W/22/3304124

Wayside Croydon Lane, Banstead, Surrey SM7 3BJ

- 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 Ellis Brown against the decision of Reigate and Banstead Borough Council.
 - The application Ref 22/00753/F, dated 11 April 2022, was refused by notice dated 22 July 2022.
 - The development proposed is partial demolition of existing 'host' dwelling attached garage; construction of a 3b6p dwelling to the rear of the existing site with associated garden space, vehicular parking and external refuse and cycle storage. Formation of new vehicular access and parking with alterations to existing vehicle crossover and formation of vehicular hard standing areas.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's reasons for refusal set out in the Decision Notice include harm to the amenity of neighbouring properties, specifically by reason of overlooking, loss of privacy, overbearance and loss of light to the rear garden of No. 2 South Drive. I am aware from the Officer Report that, despite the proposed dwelling having windows facing the neighbouring property of Sheeps Walk, the Council considers the separation distance between the proposed dwelling and this neighbouring property to sufficiently mitigate any overlooking.
3. Notwithstanding this, interested parties have raised concerns regarding a loss of privacy to Sheeps Walk and following my site visit it was apparent that the proposal would result in a significant degree of overlooking to this property, particularly its rear garden. Therefore, in the interests of the living conditions of the occupants of Sheeps Walk, I have considered loss of privacy to the occupants as a main issue of the appeal. The main parties were given an opportunity to make representations on the effect of the proposal on the privacy of the occupants of Sheeps Walk and have therefore not been prejudiced by me considering the appeal on this basis.

Main Issues

In the context of the above, the main issues are:

- whether the development 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 proposal on the character and appearance of the area;
- the effect of the proposal on the living conditions of the occupants of No. 2 South Drive with specific regard to privacy, outlook, and sunlight;
- the effect of the proposal on the living conditions of the occupants of Sheeps Walk, with specific regard to privacy;
- the effect of the proposal on protected species, with specific regard to bats; and
- on the basis that the proposal would be inappropriate development in the Green Belt, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to very special circumstances required to justify the development.

Reasons

Inappropriate Development

4. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
5. Policy CS3 of the Reigate and Banstead Local Plan: Core Strategy (2014) (Core Strategy) seeks to protect the Green Belt against inappropriate development unless very special circumstances clearly outweigh the potential harm to the Green Belt. This approach is broadly consistent with the Framework.
6. Paragraph 149 of the Framework establishes that limited infilling in villages is not inappropriate development in the Green Belt. There is no dispute between the parties that the proposal would constitute infilling. However, the parties have differing views on whether the group of houses surrounding the appeal site constitute a village.
7. I note that varying views on this question have been expressed by Inspectors in other appeals¹ located in the immediate area, and that the Council has not formally challenged any of these decisions. Nonetheless, I have formed my own view, based on my own observations and the evidence before me now.
8. The appellant has also brought to my attention another appeal decision² in a different local authority area where the Inspector also considered this question. While I do not have the full details of the development before me, given it is not located in the same group of houses as the appeal site, the site circumstances are unlikely to be comparable and I afford it limited weight in my decision.
9. The group of houses that surround the appeal site are located to the east of the defined village of Banstead, adjacent to Croydon Lane, a main road leading out of Banstead. The number of houses within the group is not insignificant and they have an organised layout. Nevertheless, they are separated from Banstead by open land that forms part of the wider countryside. When leaving

¹ Appeal References: APP/L3625/W/18/3210381 & APP/L3625/W/21/3276535.

² Appeal Reference: APP/P1940/W/17/3187494.

Banstead along Croydon Lane there are significant gaps in the built form making this separation evident on the ground.

10. It may be that an identifying name, facilities, and services are not required for a group of houses to be considered a village. However, in the absence of these features the houses have no clear identity as a distinct place. This is reflected by the development plan that does not defined them as such.
11. Overall, despite the houses being within walking distance of facilities and services in Banstead, for the reasons above, in this case, I find the appeal site is not within a village for the purposes of Green Belt policy. Thus, the proposal would not be limited infilling within a village and criterion e) of paragraph 149 of the Framework would not be met.
12. The appeal site forms part of the rear garden of Wayside and, given the large amount of built form surrounding the appeal site, it would not meet the Framework's definition of previously developed land. The proposal would therefore not constitute limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) and criterion g) of paragraph 149 of the Framework would not be met.
13. Accordingly, the proposal would be an inappropriate form of development within the Green Belt which, by definition, is harmful to the Green Belt.
14. The Council refer to Policy NHE5 of the Reigate and Banstead Local Plan: Development Management Plan (2019) (DM Plan) and Policy CS2 of the Core Strategy in terms of this harm. However, Policy NHE5 of the DM Plan relates specifically to extensions and alterations to buildings and replacement buildings in the Green Belt and is therefore not relevant in this case. Similarly, the provisions of Policy CS2 of the Core Strategy, which seeks to protect and enhance the borough's green fabric, are not applicable to the proposal in this regard.

Impact on openness

15. There are three existing outbuildings located on the appeal site, which would be removed as part of the proposal, as would the existing garage attached to the host property, Wayside. Nevertheless, while the increase in site coverage may be small, the proposed dwelling and new garage would take up more space than the removed buildings. The proposed dwelling would also be significantly taller than any of the single storey buildings being removed, thus it would have a much greater volume. This would harm the spatial openness of the Green Belt.
16. From Croydon Lane, beyond Wayside, there are currently views of tree canopies, and the impression that the land is open and undeveloped, as the low profiles of the existing outbuildings mean they cannot be seen from the public realm. The proposal includes demolition of the existing garage and access to the proposed dwelling to the side of Wayside, which would open up views into the rear garden. Therefore, while the loss of the garage would positively add to the openness, it would also allow direct views of the proposed dwelling. The proposed dwelling would be significantly taller than the existing garage and in views from Croydon Lane would fill the gap between Wayside and its

neighbour. This would result in harm to the visual openness of the Green Belt, albeit this harm would be relatively localised.

17. For the reasons above, the proposal would result in spatial and visual harm to the openness of the Green Belt. Thus, it would not preserve its openness contrary to the fundamental aim of the Framework.

Character and Appearance

18. The houses in the surrounding area vary in their scale, form, features and style, particularly those fronting Croydon Lane. However, they have a relatively conventional arrangement, set in rows directly fronting the highway. Most of the houses have generous plots and are detached or semi-detached with regular noticeable gaps between them. There are views through these gaps and over the houses, of trees and other plants in their rear gardens, as well as the wider countryside. This creates a verdant character as well as a feeling of spaciousness.
19. Many of the houses have outbuildings within their rear gardens that can be seen through the gaps between the houses. However, there did not appear to be any houses laid out in tandem style arrangements in the immediate area. The appellant has provided details of other tandem style development within the Borough, some not far from the appeal site. I do not have the full details of these developments before me. However, there appear to be significant differences between the permitted developments and the appeal proposal, particularly with regards to their location on the plot, with most of the proposed dwellings positioned directly behind the host dwelling. As such, these examples are not determinative, and I afford them limited weight in my decision. In any event, I have determined the appeal on its own planning merits.
20. The plot for the proposed dwelling would be a similar size to others in the surrounding area and there would be a relatively generous amount of space between the proposed dwelling and other neighbouring houses. Nevertheless, the proposed dwelling would be visible from Croydon Lane and would be significantly larger, particularly in height, than any of the visible outbuildings in the area. It would appear to fill the gap between the host dwelling and its neighbour and would block views of trees and planting in rear gardens. Given this, when viewed from the public realm, the proposed dwelling would appear cramped and incongruous in the street scene.
21. There is a certificate of lawfulness³ relating to the appeal site for the demolition of the existing outbuildings and the erection of two replacement outbuildings (Hereon known as the permitted outbuildings). It may be that the permitted outbuildings would be located in a similar position to the proposed garage and western end of the proposed dwelling, as well as being a similar depth to the proposed dwelling. However, they would be significantly smaller in scale than the proposal and, given their positioning and single storey profiles would not be visible from Croydon Lane. The certificate of lawfulness does therefore not lead me to another conclusion.
22. For the reasons above, the proposal would result in appreciable harm to the character and appearance of the area. Accordingly, it would conflict with Policies DES1 and DES2 of the DM Plan and the RBBC Character &

³ Reference: 22/00063/CLP

Distinctiveness Design guide Supplementary Planning Document (2021). These seek to ensure all new development, including development of residential garden land, is of a high-quality design that makes a positive contribution to the character and appearance of its surroundings and is in keeping with the existing street scene.

Living conditions of the occupants of No. 2 South Drive

23. I saw on site that the rear garden of No. 2 South Drive is at a lower level than the appeal site. The boundary between the two comprises a wooden fence and vegetation in the form of bushes and trees. The vegetation along the section of the boundary where the proposed dwelling would be located is tall and relatively dense, which limits any intervisibility between the appeal site and the garden at this point. Notwithstanding this, there is no certainty that the vegetation along the boundary would remain in its current form.
24. The rear elevation of the proposed dwelling would be close to the boundary and would have a far greater degree of permanency than the existing vegetation. While it would be positioned to the north of the rear garden of No. 2 South Drive, it would be much taller than the existing outbuildings and would overshadow the rear garden, resulting in the loss of evening sunlight during the summer. Given this, while the proposed dwelling would be over 20 metres from the rear of the house at No. 2 South Drive, it would be overbearing in this regard, and would likely feel oppressive.
25. There would be several windows and roof lights on the rear elevation of the proposed dwelling, which would directly front the rear garden of No. 2 South Drive. The appellant contends that the two dormer windows, which serve a bathroom and ensuite, would be fixed and obscure glazed. Although this is not shown on the submitted plans, I am satisfied that, if the appeal was allowed, it could be secured by condition. I am also satisfied that views from the roof lights, given their height from the floor level and the difference in ground level between the appeal site and No. 2 South Drive, would be mostly limited to the sky and boundary vegetation rather than providing views of the garden. The proposal would therefore not compromise the privacy of the occupants of No. 2 South Drive and there would be no harm to their living conditions as a result.
26. Although I have found the proposal not to compromise the privacy of the occupants of No. 2 South Drive, due to the loss of sunlight to the garden, it would be overbearing and likely feel oppressive. Accordingly, the proposal would result in moderate harm to the living conditions of the occupants of No. 2 South Drive and would conflict with Policy DES1 of the DM Plan. This seeks to ensure new development does not adversely impact the amenity of occupants of existing nearby buildings, including by way of overbearing and overshadowing.
27. The proposal would not comprise an extension or alteration and therefore the Householder Extensions and Alterations Supplementary Planning Guidance (2004) (SPG) would not appear to apply in this case.

Living conditions of the occupants of Sheeps Walk

28. I appreciate that the proposed dwelling would be over 20 metres from the neighbouring house, Sheeps Walk. However, there would be two relatively large first floor windows directly fronting the rear elevation of Sheeps Walk and

its rear garden. To ensure the privacy of occupants of adjoining properties, the Householder Extensions and Alterations Supplementary Planning Guidance (2004) (SPG), advises that to prevent overlooking, any windows with views directly into your neighbour's property at eye level (about 1.75m standing) should be avoided. I recognise that the proposal would not comprise an extension or alteration and therefore, in this case, the SPG would not appear to apply. However, the guidance is useful in setting out what might be acceptable to protect the privacy of occupants of adjoining properties and could be applied to any type of new residential development. Moreover, Case Study 3 of the RBBC Character & Distinctiveness Design Guide Supplementary Planning Document (2021), which relates to infill development to the rear of an existing house, also advises that dwellings should not face the private space of existing dwellings.

29. While the distance between the proposed dwelling and the rear elevation of Sheeps Walk would limit the degree of overlooking into the house itself, given the proximity of the proposed dwelling to the boundary, the garden space would be significantly overlooked. This would greatly compromise the occupants' privacy and as a result would harm the utility and occupant's enjoyment of the space.
30. There is already a degree of mutual overlooking of garden spaces between nearby properties. However, this results from a fairly conventional pattern of development and is therefore expected to some degree. Moreover, the existing properties that overlook the garden space of Sheeps Walk are set much further from the boundary than the proposed dwelling would be, and the views taken from them are oblique or at a right angle, rather than direct.
31. The proposed trees shown on the submitted plans⁴ may help mitigate the overlooking of Sheeps Walk. Nonetheless, a tree is not a solid barrier and I do not have any details regarding the size or species of tree that would be planted. While these details could be secured via condition, without them I cannot be certain that the trees would provide enough screening to fully address the harm I have identified.
32. I note the occupants of Chesters, the neighbouring property to Sheeps Walk, have similar concerns regarding overlooking and privacy. However, the separation distance between Chesters and the proposed dwelling would be greater. Also, views of the rear elevation of Chester's and its garden space from the proposed dwelling would be oblique rather than direct. Thus, I am not of the view that unacceptable effects would result in this regard.
33. While I note that the proposed dwelling would be a similar distance from the host property, Wayside, as the property of Sheeps Walk, it would be further from the boundary. Given its positioning, views of the rear elevation and rear garden of Wayside would be more limited and less direct.
34. Overall, the proposal would introduce a new relationship of overlooking that would compromise the privacy of the occupants of No. 2 Sheeps Walk, thus significantly harming their living conditions. Accordingly, it would conflict with Policy DES1 of the DM Plan, which seeks to ensure new development does not adversely impact the amenity of occupants of existing nearby buildings, including by loss of privacy.

⁴ Drawing No. 749.30 Rev A.

Protected Species

35. The Preliminary Ecological Appraisal⁵ (PEA) submitted with the application concludes the surveyed structures on site to have low potential to support roosting bats. However, requires that one additional activity survey is undertaken on each structure.
36. The Conservation of Habitats and Species Regulations 2017 imposes a duty to consider whether there is a reasonable likelihood of European Protected Species (EPS) being present and affected by the proposal. Bats are listed as an EPS under these regulations.
37. The appellant suggests that these additional surveys could be secured by a condition on a grant of planning permission. However, Circular 06/2005⁶ advises that 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.
38. Circular 06/2005 goes on to advise that the need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. I am not convinced that any such circumstances exist in this case. I note the appellant's disappointment that the contents of the Surrey Wildlife Trust's letter dated 26 June 2022 were not conveyed to them. However, while I sympathise with the appellant, whether or not this was the case, the requirement for the additional surveys is documented in the PEA.
39. Given the above, I find that insufficient information and evidence has been provided to demonstrate that the development would not have an unacceptable adverse effect on bats, which are a protected species. The proposal would therefore conflict with Policy NHE2 of the DM Plan which seeks to ensure development proposals retain and enhance valued priority habitats and features of biodiversity importance. For the same reasons it would also fail to meet the statutory duty I have set out above.

Other considerations

40. The appellant has not identified any very special circumstances to support the proposal. Notwithstanding this, in terms of benefits, the proposal would result in moderate economic and social benefits arising from the construction and occupation of a dwelling within walking distance of local services and facilities.
41. I have taken careful account of the representations of occupants of other properties close to the appeal site that are not considered in the main issues above, including properties along Lipsham Close. I understand that the position of the development, close to a number of rear gardens, may cause some concerns regarding impacts on privacy, outlook and light. However, given the separation distances between the proposal and these properties, their positioning, and that there is already a degree of mutual overlooking, I am not of the view that unacceptable effects would result in this regard. I also appreciate that a new development would cause some noise and disturbance,

⁵ Undertaken by Elite Ecology, dated March 2022

⁶ Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, dated 16 August 2005.

particularly during construction. Nonetheless, the construction process would only take place for a limited period and is not a reason to withhold permission.

42. Interested parties have raised concerns that the appeal site encroaches onto land not owned by the appellant and that the correct notice was not served to the landowner. However, there is no detailed or definitive evidence before me to demonstrate this to be the case. The Council's Officer Report confirms that changes were made to the site boundary in line with the correct registry information. Furthermore, the proposal would be set away from the ownership boundary and matters related to the ownership of the land would be separate to and would not ultimately influence the assessment of the planning merits of the proposal.

Green Belt Balance

43. I have found the proposal would constitute an inappropriate form of development in the Green Belt and would not preserve its openness. The Framework indicates that harm by reason of inappropriateness should be given substantial weight and that inappropriate development should not be approved except in very special circumstances. The proposal would also result in harm to the character and appearance of the area and the living conditions of the occupants of two neighbouring houses, as well as potential harm to bats. The proposal would therefore conflict with the development plan read as a whole.
44. I have given moderate weight to the economic and social benefits arising from the construction and occupation of the proposed dwelling. However, these benefits do not clearly outweigh the substantial harm by reason of inappropriateness, the harm I have identified to the openness of the Green Belt, and the other harm I have identified resulting from the proposal. Thus, there are not the very special circumstances necessary to justify the proposal. The proposal would therefore be contrary to Policy CS3 of the DM Plan and the aims of the Framework with regards to the Green Belt.

Conclusion

45. Accordingly, for the reasons above, and having had regard to the development plan as a whole and other material considerations, I conclude that the appeal should be dismissed.

Hannah Guest

INSPECTOR