



Appeal Decision

Site visit made on 11 September 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2023

Appeal Ref: APP/C3620/W/22/3313907

Land adj to 6 and 7 Dale View, Headley, Epsom, Surrey KT18 6EH

- 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 Mrs Olivia Hutchinson of Clerkenwell Estates (Headley) Ltd against the decision of Mole Valley District Council.
 - The application Ref MO/2022/0775/PLA, dated 29 April 2022, was refused by notice dated 27 June 2022.
 - The development proposed is Erection of 2 No. new dwellings and associated uses.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site is in proximity to two other separate appeal sites¹. The appeals are not being considered together because of the distance between them and because each is the subject of a separate planning application to be considered on its own merits. As Inspector for the other appeals, I am aware of the case details and will have regard to them as appropriate.
3. On 5 September 2023 the government published the revised National Planning Policy Framework (2023) (the Framework). The only substantive revisions relate to national policy for onshore wind development. In-light of the issues for consideration in the determination of this appeal, I have not sought the Council's or appellant's comments upon the changes.

Main Issues

4. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal upon the openness of the Green Belt;
 - the effect of the proposal upon the character and appearance of the area;
 - the effect of the proposal upon non-designated heritage assets (NDHAs) of archaeological interest;

¹ Refs APP/C3620/W/22/3313906 and APP/C3620/W/22/3313908.

- the effect of the proposal upon the living conditions of the future occupiers of unit 6a with particular reference to daylight and outlook; and,
- if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, and if so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

5. Paragraph 147 states that inappropriate development is by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework identifies that the construction of new buildings should be regarded as inappropriate, subject to various exceptions in paragraphs 149 and 150. The appellant advocates the proposal meets the exception at paragraph 149e), for limited infilling in villages.
6. Amongst other things, Policy CS1 of the Mole Valley Local Development Framework Core Strategy (2009) (the CS) states that limited development and infilling will take place on previously developed land within identified larger rural villages and small rural villages. The supporting text explains this is because it could occur without causing significant harm to the Green Belt. Policy CS2 of the CS provides for dwelling delivery of certain types and certain locations by means including infilling. The approach of naming specific settlements or locations is not consistent with the Framework in respect of limited infilling in villages in the Green Belt. Therefore, in respect of this main issue a conflict with those policies would attract reduced weight.
7. The terms 'limited', 'infilling' and 'village' are not defined in the Framework, although the supporting text to CS2 provides a definition of infilling. Limited development as defined in PPG2 is also referred to. I have noted subsequent judgement² findings in relation interpreting Framework terms. Whether a site is within a village, or a settlement is a village, the decision maker should have regard to the situation on the ground as well as relevant policies.
8. Dale View, and Headley to the south, are understood not to have settlement boundaries in the development plan. Dale View comprises approximately 56 semi-detached dwellings generally in groups of pairs aligned with some sections of the highway in a cul-de-sac. Along with Cunliffe Close to its south, it was historically associated with Headley Court. Aside of the recreation ground accessed via the private road and some wider limited public transport access, there is little in the way of services and facilities.
9. Approximately 184 dwellings have been approved at Headley Court to the west, with public transport, local road and footpath improvements. I am not provided with the detailed nature of these or substantive evidence of implementation. In the future it might change the appeal site context, but the evidence provided does not demonstrate the existence of Headley Court or the approval of the applications results in the appeal site being within a village.

² Wood v Secretary of State for Communities and Local Government [2014] EWHC 683 (Admin) and R (Tate) v Northumberland County Council [2018] EWCA Civ 1519.

10. Dale View is separated by woodland and open space from Headley Court and Cunliffe Close. South of Cunliffe Close there is a very dispersed development pattern with significant open spaces around Tilley Lane and Church Lane. Approximately 700m south are more tightly knit groups of development around and off Church Lane and the B2033. These definable more tightly knit and closely related groups appeared to include a significant number of dwellings and services and facilities including a shop, public house and church. I passed a village sign when heading towards that area, a few hundred metres south of the appeal site. There was also little in the way of a footway along much of the route linking Dale View and the southern concentration of development.
11. Neither party has made an unequivocal case to determine whether or not the appeal site is within a village or the extent of Headley as a recognisable village. However, based upon what I saw and the evidence before me, I do not regard Dale View and its immediate surrounds constitute a village. While noting it might be within its census district, having regard to the development pattern of Dale View, that of the surroundings, the significant areas of undeveloped land and open spaces between it and the main concentration of development, and the relationship between them, I do not regard the appeal site as being within Headley village. Therefore, I find the appeal site is not within a village.
12. The terms 'limited' and 'infilling' are a question of fact and planning judgement. I note both main parties' views upon this and the findings of the Inspector in Ref. 3306856³. However, as it is not within a village, it cannot meet paragraph 149e), so I have not considered the matter in detail. Even were it not to conflict with the purposes of including land in the Green Belt in Framework paragraph 138, it does not change my conclusion.
13. For the reasons set out, the proposal does not constitute infilling within a village, and is inappropriate development in the Green Belt as set out in the Framework.

Openness

14. Paragraph 137 of the Framework identifies the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The appeal site is a prominently positioned sizeable open sloped grassed area, part bound by boundary fencing of Nos 6 and 7 and a parking area on three sides. It is however largely open, and it contributes towards Green Belt openness.
15. The proposed new two storey semi-detached dwellings would be of a significant height, width and depth, introducing a significant amount of new built development to the appeal site. Together with the new parking area, vehicles, paraphernalia and activity, the proposal would have a significant adverse effect upon the spatial and visual openness of the Green Belt. The dale landform and surrounding trees and woodland might limit wider visibility. However, the appeal site is in a prominent corner position and the adverse effects would be clearly apparent from significant lengths of the highway in the vicinity, a number of properties, and parts of the recreation ground.
16. Any absence of conflict with the purposes of including land within the Green Belt does not change this. It would still have a significantly adverse effect upon the visual and spatial openness of the Green Belt. It would conflict with

³ Ref. APP/C3620/W/22/3306856

the aims of paragraph 137 of the Framework, insofar as this seeks to protect the Green Belt from inappropriate development and states that inappropriate development is, by definition, harmful to the Green Belt.

Character and appearance

17. Dale View comprises pairs of dwellings along broadly similar alignments with sections of the highway, and wide spaces at the ends of some rows. There are some minor design variations between certain groups of dwellings, some have modest side projections, and I noted a couple of rear dormers. However, the dwellings are discernible as pairs, of similar heights, depths, alignments, simple vernacular design, under gable roofs, with generous spacing. There is a strong, distinctive, coherent, verdant and spacious character and appearance to the area, to which the appeal site contributes positively.
18. The proposed dwellings would have a more complex hipped roof with a side gable arrangement. Although it was intended to create an end-top transition to the gable ends and turn the corner, the proposed roof form would appear strident and harmfully at odds with dwellings nearby. The detailed design of the elevations, adequately sized gardens, materials to match the surrounds, landscaping and other planning conditions could not mitigate this harm.
19. There is some variation to the gaps between dwellings, and plot edges, in the vicinity of the appeal site. The distance of the gable to the two-storey gable wall of No 6 and the gables to fencing, is not dissimilar to some examples further south and north. The opposite side gap to the highway combined with the land slope and the limited projection beyond No 7 means, as a matter of judgement, I do not find that aspect of the proposal harmfully out of keeping with the surrounds. However, this does not mitigate the other harm identified.
20. For the reasons set out above, the proposal would be harmful to the character and appearance of the area, in conflict with Policy CS14 of the CS and Policies ENV22 and ENV23 of the Mole Valley Local Plan (2000) (the MVLP). In combination and amongst other things these expect development to be of an appropriate form and appearance that respects or enhances local character, including in its design and roofscape. It would also conflict with paragraph 130c) of the Framework which expects development to be sympathetic to the local character of the built environment.
21. Given my views of the spacing of the proposal, there would not be a conflict with Policy ENV24 of the MVLP which expects dwellings do not appear cramped.

Non-designated heritage assets

22. Paragraph 194 of the Framework states that an applicant is required to describe the significance of any heritage assets affected. The level of detail should be proportionate to the assets' importance and no more than sufficient to understand the potential effects upon significance. Where a site includes, or has the potential to include, heritage assets of archaeological interest, developers are expected to submit an appropriate desk-based assessment (DBA) and, where deemed necessary, a field evaluation. Paragraph 203 states the effect upon an NDHA should be taken into account in determining an application.
23. An Area of High Archaeological Potential (AHAP) lies just east of the site around the remains of a Roman building, with another AHAP to the west. I am

informed a previously investigated Roman building could be part of activity in the area, and further evidence or features of it may be present within the site. An evaluation of a nearby site confirmed the presence of features and finds indicating high-status Roman occupation in the vicinity. It is also possible that features linked to ring ditches or less well-defined ring ditches, may also be present. The appellant's DBA indicates a moderate or high potential for heritage assets of significance from the Bronze Age and Roman periods.

24. The DBA acknowledges there may be a requirement for further investigation prior to determination, and plans may need to take account of areas of archaeology. There could be features warranting in-situ preservation due to either their significance and/or the potential cost of excavation, or other mitigation measures appropriate to their significance. This could have implications for the acceptability of the development, or its form or layout.
25. Though the DBA anticipates archaeological remains of local importance, this is by no means certain. Such is the degree of potential for heritage assets of significance and the implications of it for mitigation and scheme design, I am satisfied it is necessary for further pre-determination works to establish the significance of the assets and the effects of the proposed development upon them, such as trial trenching and evaluation. Therefore, the approach of imposing a Grampian condition⁴ is not an acceptable solution in this instance.
26. Therefore, I cannot be certain of the effects of the proposal upon the significance of NDHAs, or that there would not be unacceptable effects. It would conflict with the aims of Policy 49 of the MVLP and Policy CS14 of the CS, which state that areas and sites of historic importance will be protected in accordance with legislation and national guidance and a developer may be required to provide an archaeological field survey before the determination of an application. It would also conflict with paragraph 194 of the Framework, the relevant provisions of which are set out above.

Daylight and outlook

27. The proposed new dwellings would meet many aspects of development plan requirements including in respect of internal and external space standards, overall layouts and daylight and outlook to many of the habitable rooms. However, bedroom 3 of unit No 6a is served by a single external south facing window almost in the corner of the room and close to a projecting side wall.
28. There would be a good degree of open outlook to the south and southwest. While the side wall is in proximity, it is only a limited depth and although the plans are only indicative its potential layout, the view from in much of the room would have a reasonable level of outlook. As a matter of judgement, the window size, and extent and position would allow a satisfactory level outlook.
29. Though the window is south facing due to its corner position it would provide natural light to a relatively limited proportion of the room and light from the east and southeast would be restricted by the projection wall. It would result in light levels that would be low for a significant proportion of the time, and it would provide limited daylight to the room as a whole. It would feel somewhat darkened and reliant upon artificial light for much of the time. While noting it could be a bedroom primarily for night-time use, it may also be occupied

⁴ MO/2020/0185.

frequently during the day. I consider the conditions would be such that it would not provide satisfactory living conditions for future occupiers.

30. For the reasons set out above, the proposal would not provide satisfactory living conditions for the future occupiers of No 6a in respect of daylight. It would conflict with Policy ENV22 of the MVLP which requires that development is of a design and layout that provides a satisfactory environment for new occupiers. It would also conflict with paragraph 130f) of the Framework which expects development to provide a high standard of amenity for future users.

Other considerations

31. The emerging local plan (ELP) identifies a number of sites are necessary in the Green Belt to meet housing requirements. Though this has been examined and subject to modification indicated to be sound, the Council has agreed pauses pending possible changes to national policy. Having regard to paragraph 48 of the Framework, it might well have attracted significant weight. However, the level of uncertainty surrounding its progression, and future form, means I attribute it only moderate weight.
32. The proposal would result in limited economic benefits during construction and once complete limited on-going benefits to the local economy through on-going spend. There would also be a small contribution to the vitality of local and rural communities, services, and facilities. The removal of guidance in the Planning Practice Guidance (PPG) that unmet housing need is unlikely to outweigh harm to the Green Belt is noted, and it is a matter for the decision maker to take a view upon, based upon the circumstances of a particular case.
33. The Council's Housing Delivery Test (HDT) result is 70%, it can only demonstrate 2.9-year Housing Land Supply (HLS) and the appellant suggests the under supply has been persistent, with demand high, so need could be considered acute. Therefore, the development plan policies most important for determining the application are deemed out of date and paragraph 11d) of the Framework is engaged. The position of the ELP means there are uncertainties as to the way forward to addressing housing needs. Therefore, while this proposal is only for two dwellings, in the current circumstances the social benefits to supply, overall, attract significant weight in favour of the scheme.
34. If, as suggested in interested parties' submissions, protected trees were removed prior to making the application, they are not part of the proposal before me, and are a matter between the Council and appellant. It is possible that, in the future, subject to the imposition of suitably worded conditions this proposal might secure an overall biodiversity net gain and some landscape enhancements. However, there is nothing before me to suggest these would be anything other than limited benefits. A surface water drainage scheme compliant with current standards might result in an overall benefit, but there is nothing to suggest this would be anything other than a limited benefit.
35. The Council's officer report refers to a conflict with Policies MOV2 and MOV5 of the MVLP, Policy CS18 and the Framework in respect of the location being likely to result in private vehicle journeys, which the appellant has not subsequently disputed. It is not a reason for refusal in the decision notice and the Council's report acknowledges, as set out in the Framework, opportunities to maximise sustainable transport solutions will vary between urban and rural areas. As I am dismissing this appeal for other substantive reasons and the number of

private vehicle journeys would not be a benefit, I have not considered the matter in detail. Were I to have found the proposal to be policy compliant in this regard it would be a neutral matter in the balance.

36. Were I to agree with the appellant that Policies CS1 and CS2 are not of relevance, this would be a neutral matter. However, they are consistent with certain objectives of paragraphs 8, 9, 78-80, 105, 119 and 124 of the Framework, and insofar as they aim to protect the Green Belt from inappropriate development, the conflict with CS1 and CS2 in the context of the main issues in this appeal still attracts limited weight.
37. Not conflicting with Green Belt purposes in Framework paragraph 138 attracts limited weight. Based upon the evidence before me, compliance with policies in respect of matters such as accessibility, access and parking standards, vehicle charging, refuse and recycling provision, renewable energy, energy and resource efficient design and flood risk, would be neutral matters. Compliance with policies concerning the living conditions and environment of future and neighbouring occupiers would also be neutral matters in the balance.
38. I do not have the full circumstances, details and evidence considered by the Inspectors for the appeal decision letters⁵ provided by the appellant. Ref nos. 3265925 and 3265926 were for up to 100 dwellings combined. The HLS shortfall was greater in the two authorities, they had not met their statutory duty for custom and self-build housing and there was 97% and 94% shortfalls in affordable housing delivery. The market, affordable and self-build dwellings attracted very substantial, very substantial and substantial weight respectively.
39. In Ref. 3296116 the overall HLS shortfall was also greater and the latest HDT result was at 41%. The delivery of 47 homes of which 55% were market and 45% affordable, each attracted very substantial weight. While the effects upon the Green Belt would have been greater, the housing needs and benefits were substantial in those appeals. Therefore, they are not directly comparable to this proposal, and do not necessarily justify a similar finding in this appeal.

Green Belt & Planning Balance

40. The proposal would be inappropriate development that would, by definition, harm the Green Belt, and would result in harm to visual and spatial openness. I have identified significant harm to openness of the Green Belt. In accordance with the Framework, substantial weight should be given to any harm to the Green Belt. In addition to this, I have identified harm to the character and appearance of the area, the living conditions of future occupiers, and from the conflict with policies in respect of NDHAs. Therefore, the matters weighing against the scheme are of a high order.
41. Overall, the factors and benefits set out by the appellant, attract significant weight in favour of the scheme. However, they would not clearly outweigh the harm identified to the Green Belt, and the other harm, which attracts substantial weight. Consequently, the very special circumstances necessary to justify the development do not exist.
42. The proposal conflicts with paragraphs 137, 147 and 148 of the Framework, which seek to preserve the openness of Green Belt and protect it from inappropriate development, unless very special circumstances exist. Therefore,

⁵ APP/B1930/W/20/3265925, APP/C1950/W/20/3265926 and APP/V1505/W/22/3296116.

in accordance with paragraph 11d) of the Framework, the application of policies that protect areas or assets of particular importance provide a clear reason for refusing the development, for which the policies of the Framework have not been met. Consequently, the tilted balance does not apply.

Conclusion

43. The proposed development would be contrary to the development plan read as a whole, and the Framework, and there are no considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR