



Appeal Decision

Site visit made on 1 February 2024

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th February 2024

Appeal Ref: APP/C3620/W/22/3313897

**Land rear of Opus 1, Ryebrook Business Park, Bay Tree Avenue,
Leatherhead KT22 7LA**

- 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 Leatherhead 20 Limited against Mole Valley District Council.
 - The application Ref MO/2022/1249, is dated 12 July 2022.
 - The development proposed is redevelopment to provide residential units, landscaping, associated undercroft car parking, refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Leatherhead 20 Limited against Mole Valley District Council. This application is the subject of a separate decision.

Preliminary Matters

3. I have used the Council's site address as this more accurately describes the location. I also note that the appellant has used this address in their appeal form.
4. Since the appeal was lodged, a revised version of the National Planning Policy Framework (the Framework) was published (December 2023). This does not materially change the planning policy context in respect of the main issues.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the living conditions of the occupiers of neighbouring dwellings, with particular regard to outlook;
 - whether sufficient affordable housing would be provided; and
 - the effect of the proposed development on the character and appearance of the site and surrounding area.

Reasons

Living conditions

6. Opus Court (Opus 1) is an existing residential development, positioned to the east part of the appeal site. Four storeys containing windows which serve habitable rooms face in a westerly direction. The proposed development would be positioned approximately 10 metres to the west of those windows, rising to five storeys in height.
7. I accept that an area of landscaping would be provided within this 10 metre gap. However, the combination of this very limited separation distance and the overall scale of the proposed development, positioned at a higher site level, would obstruct outlook from these existing rooms and create a harmful sense of enclosure. This would result in gloomy living conditions for the occupiers of the existing dwellings at Opus Court, which currently have uninterrupted outlook over the appeal site. While outlook would likely become more limited with any future development at the site, the proposed separation distance currently proposed is unacceptable.
8. I accept that there would be no harm with respect to overlooking or daylight and sunlight. However, the lack of harm in these respects does not change my conclusion in relation to living conditions overall.
9. For the reasons given, I conclude that the occupiers of the neighbouring Opus Court would likely experience an unacceptable loss of outlook and oppressive sense of enclosure, contrary to the relevant provisions of Policy ENV22 of the Mole Valley Local Plan (LP, 2000). This policy, amongst other requirements, seeks to ensure that development does not significantly harm the amenities of the occupiers of neighbouring properties. This is in a similar vein to the provisions of the Framework insofar as they relate to living conditions.

Affordable housing

10. Policy CS4 of the Core Strategy (CS, 2009) sets out that developments of 15 or more dwellings require 40% of those units to be affordable. On sites accommodating 10 or more dwellings, on-site provision is sought.
11. A viability assessment has been submitted to support the scheme. This sets out that no affordable housing provision, either on or off site, could be supported. This assessment was reviewed by the Council's independent viability consultants during the course of the application. While they concurred that a fully policy compliant level of affordable dwellings could not be provided on-site, a financial contribution was deemed possible. However, no further information or correspondence is before me to conclude on this matter. Moreover, my attention is drawn to a separate scheme at the site, which is for 50 dwellings, and which has involved the payment of a financial contribution towards off-site provision. Apart from the reduction in units, it is unclear what differences exist between the two schemes.
12. It is evident that the parties have not concluded on these matters, with the appellant's appeal statement setting out that "the Appellant would seek to come to an agreement on the affordable housing offer prior to determination of this Appeal". No such agreement is before me.

13. Overall, I have insufficient information before me to conclude that the proposed affordable housing offer (zero) would be acceptable. Therefore, the proposed development would fail to accord with the relevant provisions of CS Policy CS4, which in summary seeks that appropriate levels of affordable housing provision are provided. This is in a similar vein to the Framework insofar as affordable housing is concerned. Even were I to agree on this matter, it would not change my conclusion on the main issue above.

Character and appearance

14. The appeal site is formed, in part, of an existing car park to the adjoining Opus Court (Opus 1) building. This is a large four storey former commercial building that has recently been converted to residential dwellings.
15. Buildings of a similar scale are located within the immediately surrounding area, many of which retain a commercial use. More traditional residential housing exists to the south and east of the site. Overall, the urban make-up of the surrounding area is one which is varied in both style and scale.
16. The proposed building would be relatively large and I do not doubt that it would appear prominent within the streetscene, particularly along Bay Tree Avenue. There is no clear reason why a building in this location should appear subservient to the established Opus 1, given the range of buildings that exist here. The building would be visible, albeit only momentarily from Kingston Road. This would be lessened during the summer months when existing mature landscaping is in leaf. I also accept that the upper part of the building may be visible from further afield. Nevertheless, this would be set amongst an established and varied townscape.
17. The introduction of built form along Bay Tree Avenue would, in my view, be positive. The site is positioned within an urban part of Leatherhead, and the proposed development would enclose part of Bay Tree Avenue where this is currently devoid of built form. It would fill the unwelcome gap that currently exists in this location and, to some degree, enliven this stretch of road, certainly at the upper floor levels.
18. The detailed design of the building is relatively pared back. It would introduce a simple and contemporary designed development to the site. This, including its flat roof, would not be out of keeping with the varied immediate surroundings.
19. Overall, I conclude that the proposed development would have an acceptable impact on the character and appearance of the site and surrounding area, in accordance with the relevant provisions of LP policies ENV22, ENV23 and ENV24 and CS policy CS14. These policies, in summary and when taken as a whole, seek to ensure high quality design in development. This is in a similar vein to the Framework insofar as good design is concerned.

Other Matters

20. The submitted evidence indicates that the Council cannot demonstrate a five-year housing land supply (2.9 years). As such, and noting the Government's objective of significantly boosting the supply of homes, the provisions of Framework paragraph 11.d are engaged. This sets out that where the policies which are most important for determining the application are out of date, permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a

clear reason for refusing the development proposed, or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

21. Following assessment, there are no policies in the Framework relevant to the site which protect areas or assets of particular importance, and which provide a clear reason for refusal. As such, it is necessary to apply Framework paragraph 11.d(ii).
22. The proposed development would represent a contribution of 54 extra dwellings to housing supply in an area with an acknowledged lack of future provision. There, too, would be some other social and economic benefits of the proposed development, including in supporting employment during construction and the bringing of trade to nearby services and facilities, including within the town centre. I note that the proposed development would also optimise a site located in an accessible position. I give these matters moderate weight.
23. I also accept that other planning policy objectives would be met, including in respect of internal space standards, open space provision, trees, flood risk, biodiversity net gain and parking. I, too, note that there are no heritage designations here. Landscaping proposals are also before me. Nevertheless, these matters are not in dispute between the appellant and the Council and I have no reason to disagree with those findings. These considerations are therefore neutral in my determination of the appeal. Moreover, I do not doubt the sustainability credentials of the scheme. Nevertheless, this is not wholly reliant on the scheme before me.
24. Overall, given the significant harm I have identified above, the adverse effects of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
25. I note the frustration of the appellant in the suspension of the Council's pre-application service. This is a matter best dealt with under a costs application. In any case, I have assessed the proposed development based on the plans and evidence before me.

Conclusion

26. For the reasons above and having had regard to the development plan as a whole, and all other relevant material considerations, I conclude that the appeal should be dismissed.

A Price

INSPECTOR