



## Appeal Decision

Site visit made on 8 April 2024

by **J Ayres BA Hons, Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 15 July 2024

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**Appeal Ref: APP/C3620/W/22/3297866**

**Ruins of Betchworth Castle, Coach Road, Brockham, Surrey, RH3 7JW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Martin Higgins against Mole Valley District Council.
  - The application Ref is MO/2021/0903.
  - The development proposed is Lowering of ground level along southern edge of schedule by approximately 3m to reveal medieval defensive profile and erection of a dwelling, garden walls, potting shed, and associated works including drilling a water borehole and erection of outhouse and greenhouse. Ground raising to north of schedule to improve access with disposal of excavated material on the wider site.
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### Decision

1. The appeal is dismissed, and planning permission is refused.

### Main Issues

2. 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 proposal on the character and appearance of the area;
  - The effect of the proposal on the historic environment;
  - Whether the proposal would provide adequate living conditions for occupiers;
  - Whether the proposal would satisfactorily manage groundwater;
  - The effect of the proposal on the biodiversity of the site; and
  - Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

### Reasons

*Whether the proposal would be inappropriate development*

3. Development within the Green Belt is inappropriate with the exception of development as listed in paragraphs 154 and 155 of the Framework.

4. The appeal site contains the ruins of Betchworth Castle (the Castle), a Grade II listed building and Scheduled Monument. Paragraph 154(g) of the Framework advises that development may not be inappropriate where it relates to the limited infilling or partial redevelopment of previously developed land. The proposed development would create a new dwelling with residential curtilage in an area south of the Castle. The area of land has been vacant of structures for some time, and is currently occupied by trees and scrub, and whilst it falls within the setting of the Castle, it is not within its curtilage.
5. Accordingly, the proposed development would not fall within any of the criteria listed and is therefore inappropriate development. This is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

*The effect of the proposal the openness of the Green Belt*

6. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness is generally described as the absence of development. There are several factors that can be considered, but it has both spatial and visual aspects.
7. The proposal would incorporate a single dwelling with garden walls, potting shed, outhouse and greenhouse, in an area of the site currently covered by trees and scrub. At present the tree coverage provides part of the setting for the Castle, which is a prominent element of the landscape due to its elevated position within Betchworth Park Golf Course.
8. Groundworks would be undertaken to lower the ground level by approximately 3 metres, and raise the northern element of the site, with the lower ground floor of the proposed dwelling set into the ground. However, the upper storey would be above ground level, with a lounge roof terrace enclosed by glass balustrades incorporated into the design. To the east of the dwelling a glass link would join to a workshop and potting shed. The garden would contain the greenhouse and well house, with the dwelling and its garden enclosed by a part stone part earth wall, creating a separation from the wider appeal site and Castle.
9. The proposal would introduce a residential use onto a parcel of land which is currently devoid of development and functioning as a setting to the Castle. The built form and residential paraphernalia would have a spatial and visual impact on the openness of the Green Belt through the erosion of the existing character, and intrusion of new built form.
10. Whilst there is activity within and around the site, this is predominantly by foot, and the introduction of traffic movements associated with a four bedroom house, in addition to the physical parking and storage of vehicles associated with the dwelling, would encroach open the openness of the site and in turn diminish the openness of the Green Belt.
11. Attempts would be made to settle the dwelling into the site through the excavation works, thereby reducing the impact of the dwelling. However, the proposal would physically segregate the parcel of land from the wider site and fill that land with residential built form and paraphernalia. The creation and use

of a residential dwelling and associated curtilage would be harmful both spatially and visually to the openness of the Green Belt.

12. I find that the proposal would fail to preserve the openness of the Green Belt, therefore conflicting with policy CS1 of the Core Strategy which advises that new housing will be directed towards built up areas, housing in the countryside will be considered in accordance with local and national policy on green belts.

*Effect of the proposal on the character and appearance of the area*

13. The appeal site is within the Surrey Hills Area of Outstanding Natural Beauty (AONB) and an Area of Great Landscape Value (AGLV). The area has a diverse character, the appeal site is set within gently rolling hills, some of which form the golf course, it looks over a sunken fishing lake, and whilst there are pockets of woodland and mature trees in the area, it has a prominent position within the surrounding landscape.
14. However, the elevated location of the proposed dwelling would render it conspicuous when viewed from the surrounding protected landscape. It would be substantial in size, and whilst set into the land the lower ground level would not be entirely obscured, thus contributing to the significant bulk of the building. The associated domestic paraphernalia and parking area would be visually intrusive and entirely out of place with its immediate setting. Moreover, the proposal would result in light pollution due to its elevated position away from other light sources.
15. Whilst its modern design would, in isolation, create an interesting and striking property, the location of the design within the landscape would appear incongruous and alien. It would fail to relate to the residential development in Castle Gardens and would be entirely at odds with the rolling topography of the golf course.
16. The ruins represent part of the tapestry of the historic settlement of the AONB over the centuries, and therefore would fall within the definition of 'natural beauty' in the AONB Management Plan. However, I consider that the scale and magnitude of the proposed dwelling, in addition to its location within a visually and spatially prominent site, would be harmful to the 'natural beauty' of the ruins.
17. I find that the proposal would fail entirely to conserve and enhance the natural and scenic beauty of the AONB. It would result in significant harm to the AONB, and conflict with Policy CS14 of the Core Strategy, in addition to conflicting with Policies ENV22, ENV23 and ENV24 of the Mole Valley Local Plan. These policies collectively required development to respect and enhance the character of the area, ensuring that it is appropriate in terms of scale, form and appearance. It would also conflict with Policy P2 of the Surrey Hills AONB Management Plan which requires development to respect the special landscape character of the area. In failing to conserve and enhance the natural and scenic beauty of the AONB the proposal would fail to adhere to paragraph 182 of the Framework.

*Effect of the proposal on the historic environment*

18. The Castle is a ruined, fortified medieval manor house, which is Grade II listed and forms part of a Scheduled Ancient Monument.

19. The Manor of Betchworth was held by Richard fitz Gilbert after the conquest, and later by William de Warenne and his heirs until 1316. In 1379 Sir John Fitzalan was granted a licence for works for the dwelling house and to establish a deer park around it. A second licence was granted in 1448 to Sir Thomas Browne, possibly for the creation of the corner tower. At this time the house comprised 4 ranges around a central courtyard.
20. Archaeological evaluation in the southern part of the site revealed buildings of thirteenth- and fourteenth- or fifteenth-century date, and a medieval perimeter wall. A resistivity survey seems to show a medieval drive approaching the ruins from the southwest, and the buried remains of walls to the south of the standing ruins.
21. A large part of the fortified house was demolished in 1691 leaving only the medieval east wing, to which was added a new north wing to create a rather more modest country house. From the eighteenth century the southern area contained formal gardens and there was a high wall to the east, between the gardens and a promenade terrace along the cliff top.
22. The house was dismantled in the 1830s to create a romantic ruin within the parkland of the Deepdene estate. Today the north end of the east wing survives in ruinous condition and the east terrace walk also survives. The formal garden area is flat and featureless, and quite overgrown.
23. The architectural and historical significance of the remains is the illustration of the aspirations of the richest and most powerful members of medieval society to combine domestic and military elements in high status dwellings, and the adaptation of an important medieval residence to the changing needs and fashions of later centuries.
24. With its location within the AONB, set amongst the undulating landscape and pockets of vegetation, the Castle and surrounding site creates a magical atmosphere. The tranquillity and rurality of the site helps to evoke a sense of the antiquity of the place. In long views from the east, the ruins and terrace are a distinctive landmark and contribute to the natural beauty of the AONB.
25. The proposed construction site lies on the site of the medieval, possibly defensive, scarp and the post-medieval garden. The proposed dwelling would be a jarring and discordant addition to the site, the creation of a residential space and the accompanying paraphernalia would introduce a use and character entirely at odds with the romance that is created by the Castle. The change of character and physical setting from scrubland and open areas, consistent with a ruin, to a residential dwelling with ancillary outbuildings and formal curtilage with an extensive boundary wall would be devastating to the setting of the Castle.
26. Whilst some views would be obscured from the public realm, and effort would be taken to sink the dwelling into the land, this would not overcome the fundamental harm that would be caused in carving up the site and introducing a use and development so entirely at odds with the Castle and its setting.
27. Accordingly, having regard to the sheer level of visual intrusion, the partitioning of the site and encroachment into the setting of the Castle, and the fact that the harm would continue in perpetuity, I find that the proposal would result in harm, albeit less than substantial, to the setting of the listed building,

and I give considerable weight to this harm and the desirability of preserving the setting of the listed building. Any harm should require clear and convincing justification. Paragraph 208 of the Framework sets out that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

28. At present the optimum viable use of the listed building would be to retain it in situ, with the necessary repairs and maintenance funded. Whilst the proposal would not meet the definition of Historic England's enabling development, I consider it prudent to have regard to the guidance set out in the Framework. Paragraph 84 of the Framework advises that isolated homes should be avoided, however an exception to this would be to secure the optimum viable use of a heritage asset, or appropriate enabling development to secure the future of the asset.
29. Whilst the owner of the site has given tours of the Castle and sought to promote local interest in the site, it does not generate an income capable of maintaining the listed building. Due to the topography and intrinsic nature of the site, it would not be possible to use the Castle for functions, and the land is not suitable for grazing.
30. The Castle has been listed on the Heritage At Risk Register since 1999, and the appellant has undertaken a significant amount of work to repair and maintain the site. The issue of securing funding for the maintenance of the site has been unresolved for a substantial period of time.
31. An endowment to enable the future maintenance of the Castle would be created through the uplift in value of the land following the grant of planning permission for the proposed development. The value of the endowment would be based upon the value of the completed development net of the development costs, developer profit and associated fees. However, there is no red book valuation before me to identify exactly what funds would become available through such a proposal.
32. It is proposed that the endowment would be transferred to a Building Preservation Trust (Surrey Historic Buildings Trust) on completion of development, who would manage the maintenance of the site in perpetuity. However, whilst there is support from Surrey Historic Buildings Trust in respect of the proposal, there is no evidence that the parties have completed any formal documentation that would secure the transfer. Moreover, there is nothing before me to demonstrate how the endowment would be secured, and used appropriately in respect of maintaining the Castle.
33. At present, there is a legal agreement between the Council and the appellant securing an overage on the uplift of the value of the land, with the Council benefitting from 100% of any profit. In order for an endowment approach to be successful it would be necessary for this to be amended. However it is clear that the appellant has not been able to secure such a deed of variation, and therefore any money raised through the grant of the proposal would revert to the Council. This would be entirely unsatisfactory as the appeal site is not within the Council's control and the funds, which would have been acquired for maintenance of the asset, would not be secured to be used for such purpose.

34. Accordingly, whilst the preservation of the Castle would be a public benefit, there is nothing in this proposal that would secure that benefit. As such I find that there are no public benefits demonstrated that would be sufficient to outweigh the harm caused to the significance of the designated heritage assets affected; harm that must attract considerable importance and weight in the balancing exercise.
35. I find that the proposal would conflict with Policy CS14 of the Core Strategy and Policy ENV43 of the Local Plan. These policies seek, among other things, to protect sites of historical importance, and to ensure that proposals do not detract from the character or setting of the listed building.
36. The Betchworth Management and Conservation Plan 2001 (Management Plan) was drafted with a view to guiding the maintenance and preservation of the site. However, whilst this demonstrates concerns and decisions and a vision for the site, it was not formally adopted and is not part of the development plan. Moreover, due to the age of the document I consider that it examines a time period that has now lapsed, the site is materially different and should be considered as it now exists.

*Effect of the proposal on living conditions*

37. The appeal site is accessed via a long, largely single-track lane, which weaves its way through the golf course from the main highway. It is unclear from the evidence where refuse would be stored, whether on or off site, and how it would be collected by a collection vehicle.
38. The proposed dwelling and its garden would be within the setting of Betchworth Castle, which can be accessed by the public insofar as it is possible to walk the full boundary of the site. Whilst attempts have been made to screen the property for landscaping purposes, future residents would essentially be living in a property that would be on display, in a highly prominent location. Members of the public would be able to circle the grounds, and as such future residents would not be provided with a satisfactory level of privacy.
39. Accordingly, I find the proposal would conflict with Policy ENV22 of the Local Plan which includes a requirement for new development to provide a satisfactory environment for occupiers.

*Whether the proposal would satisfactorily manage groundwater*

40. Details were submitted to the Council regarding this matter by way of an email from the appellant. Within which it is explained that the proposed dwelling would be an exempt small sewage discharge in accordance with the Daily discharge calculator for domestic properties. Furthermore, the email sets out that discharge would pass through a package sewage treatment plant and an infiltration system and will be subject to local authority building control.
41. Whilst the appellant has submitted further information, the Environment Agency has not provided any additional comments in respect of the email.
42. Groundwater is particularly sensitive in this location because the proposed development site is situated upon the Hythe and Folkestone bedrock formation, classified as a Principal aquifer. Accordingly, based on the evidence before me, I find that adequate information has not been provided to demonstrate that the risks posed by development to groundwater can be satisfactorily managed. The

proposal would therefore conflict with Policy ENV67 of the Local Plan which advises that development will not be permitted which may have an adverse impact on the quality of groundwater.

*Effect of the proposal on biodiversity*

43. The site has a number of mature trees and scrubland within it, as part of the proposal approximately 16 trees would be removed, however this figure varies slightly within the evidence. In any event, this would represent a significant level of clearance. Whilst an inspection was carried out of the twin horse chestnuts (T58 and T59), advising that one should be felled and the other significantly reduced, it is not clear that the proposal would necessitate the removal of such a significant level of trees.
44. Additional studies would be necessary to confirm the effect of the proposal on ecology, furthermore it would be necessary to consider a detailed landscape and ecological management plan to ensure that the proposal secures biodiversity net gain. Whilst the Biodiversity Management and Maintenance Scheme would provide for the replacement of trees with a view to enhancing biodiversity, it fails to address some of the ecological matters.
45. I note that the Management Plan recommended the removal of all trees to protect the buried archaeology. I have previously addressed this document. In respect of its use in conjunction with the biodiversity of the site as a material consideration, I find that due to the age of the document it is unlikely to adequately reflect the circumstances of the site in the present day.
46. The proposal would result in the loss of trees currently on site, it is not entirely clear how many, nor whether such level of clearance would be necessary. Accordingly, I find that the proposal would conflict with Policy CS15 of the Core Strategy and Policy ENV15 of the Local Plan, which collectively advise that mature hedges and trees within development sites should be, as far as practicable, retained.

*Other considerations*

47. The proposal would be inappropriate development within the Green Belt. In accordance with the Framework substantial weight should be given to any harm to the Green Belt. In addition, there would be an erosion of openness and a conflict with one of the purposes of the Green Belt. These factors weigh very heavily against the proposal.
48. There would also be harm to the character and appearance of the surrounding area, and the proposal would fail to conserve or enhance the AONB. Furthermore, the proposal would be harmful to the significance and setting of designated heritage assets; harm that must attract considerable importance and weight. The proposal would fail to provide satisfactory living conditions for future occupiers, and it has not been demonstrated that the proposal would result in a biodiversity net gain.
49. Set against this the proposal would deliver one dwelling within an area with a poor housing delivery and supply position. Whilst the suggestion is that the proposal would secure the future of the heritage asset, I have found that there is no mechanism in place to secure this, and therefore do not consider the proposal would provide a public benefit in this regard, it therefore attracts severely limited weight.

50. It is a fall-back position for the appellant to serve a Reverse Purchase Notice on the Council. Having regard to the unsuccessful attempts made by the appellant to secure long term funding it is a possibility that this would be a necessary step for them. However, this is a course of action available to the appellant and does not alter my findings in respect of the harm identified, and I give this very little weight.
51. The other considerations that support the proposal when matched up against the very strong Green Belt and visual objections, along with the clear harm to the AONB and setting of the listed building, do not clearly outweigh the totality of harm. As a result, very special circumstances necessary to justify the development within the green belt do not exist.

### **Conclusion**

52. As I have found that enabling development would not be secured by this proposal, it is not necessary for me to assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, would outweigh the disbenefits of departing from those policies.
53. The proposal would fail to comply with the development plan as a whole and there are no material considerations to outweigh the conflict with the development plan. For the reasons given, the appeal is dismissed, and planning permission is refused.

*J Ayres*

INSPECTOR