

Appeal Decision

Site visit made on 19 September 2024

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2024

Appeal Ref: APP/C3620/W/24/3337285

Rydal Oaks, Cobham Road, Bookham, Cobham, Surrey KT11 3QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mrs Joni MacKay against the decision of Mole Valley District Council.
 - The application Ref is MO/2023/1122/PLA.
 - The development proposed is the erection of a replacement detached house following demolition of non-agricultural outbuildings. Amendment to residential curtilage.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mrs Joni Mackay against Mole Valley District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The above description of development is taken from part E of the appeal form and the Council's decision notice. This is in the interest of clarity.
4. The Government published in December 2023 a revised version of the National Planning Policy Framework (the Framework). The Council and the appellant have referenced this document within their appeal statements and as such I am satisfied that no party would be prejudiced by my also making reference to the Framework in this decision.

Main Issues

5. The appeal site is located within an area of Green Belt. Accordingly, I consider the main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the 'Framework') and relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt;
 - the effect of the proposal on protected species; and

- If the development would be inappropriate, whether the harm to the Green Belt by way of inappropriateness and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether Inappropriate Development

6. Policy CS1 of the Mole Valley Local Development Framework Core Strategy (2009) (CS) sets out a spatial strategy for the district and indicates that in the countryside, development will be considered against other policies and government guidance.
7. Policy RUD8 of the Mole Valley Local Plan (2000) (LP) relates to the replacement of dwellings in the countryside, and amongst other matters, sets out that replacement dwellings would be permitted where they are not materially larger than the dwelling it replaces.
8. The Framework states that the construction of new buildings within the Green Belt is to be regarded as inappropriate development subject to the exceptions which are set out in paragraph 154. Part (d) of this paragraph lists the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
9. Neither LP Policy RUD8 nor the Framework define the term materially larger.
10. The submitted plans show that the existing house, plus all the outbuildings to be demolished, which include a stables and 'non-agricultural barn' some distance from the house, measure a total of 464.2m² in floorspace. The proposed dwelling and pool outbuilding would measure a total of 697.2m². This is a significant increase in size. In addition, the plans show the proposed dwelling would be significantly greater in width than the existing, and the footprint also appears to be substantially larger. I conclude therefore that the proposed replacement dwelling in this case would result in a building that would be materially larger than the buildings it replaces. As such, the proposal does not meet the requirements of Framework paragraph 154 (d).
11. The Council and the appellant have also put forward that the exception at paragraph 154 (g) of the Framework is relevant. This concerns the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings). Such development is acceptable where it would not have a greater impact on the openness of the Green Belt than the existing development.
12. The courts have held that the openness of the Green Belt has a spatial aspect as well as a visual aspect. As set out above, it is evident that the proposed dwelling would be larger in floor space than the existing dwelling and outbuildings. There would therefore be a spatial harm to openness.
13. In addition, the form of the existing property is broken up by its design, with numerous gables and dormers reducing the visual massing of the roof. The proposed dwelling has a bulkier and more consistent roof form, resulting in a larger first floor and visually more prominent building, as the roof ridge would extend to a greater width.

14. Whilst the appellant sets out that the proposed extended garden curtilage was also previously permitted, the proposed pool building would be sited outside the existing garden area of the property. As such, whilst the proposal would reduce the spread of the other structures across the site, it would increase the spread of residential buildings into the rear of the site, which is at present open and free of built form.
15. As such, there would therefore be a visual and spatial loss of openness to the Green Belt. The proposal would therefore also not meet the criteria of Framework paragraph 154 (g) and would represent inappropriate development.

Openness

16. The Framework indicates that openness is an essential characteristic of the Green Belt with a fundamental aim of Green Belt policy being to prevent urban sprawl and keep land permanently open.
17. As set out above, the proposal would result in a visual and spatial loss of openness to the Green Belt. Whilst mostly obscured from view from Cobham Road by roadside vegetation, it would be partially visible between gaps in the roadside hedgerow from longer distance views to the north west. Overall, the proposal would result in moderate harm to the openness of the Green Belt. This is contrary to one of the main aims of Green Belt policy.

Protected Species

18. Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say 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 the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision"*.
19. A Bat Survey¹ was submitted with the appeal. The survey concluded that the main residential building *'can be classified as having a high potential to support roosting bats.'* It recommended further surveys be undertaken. The Bat Evening Emergence Survey Report² subsequently carried out found that, despite a relatively large amount of foraging and commuting activity of bats recorded and observed within the immediate local surroundings, no bats were observed emerging from the building during the surveys. As a result, no further surveys were recommended. Nevertheless, caution was recommended, with the presence of a bat ecologist required to supervise the removal of the hanging tiles. A condition relating to this – in relation to demolition, this was imposed on permission MO/2023/0228.
20. Both the above submitted documents set out that *'In order to minimise the likelihood of adverse effects on protected animal species over time, it is accepted good practice, in accordance with Natural England guidance for*

¹ By Sylvatica Ecology, dated 9 February 2021

² By Sylvatica Ecology, dated 29 July 2021

ecological surveys to be repeated should works be deferred for over 12 months from the date of initial survey.'

21. It is also noted that the comments received from the Surrey Wildlife Trust for this previous application set out that the two surveys are likely to be valid until June 2023.
22. Both surveys are now well over 3 years old. As such, in accordance with guidance, they are considered out of date, and further information is necessary, as there is a reasonable likelihood of the species being present and affected by the development.
23. Whilst I note that the previous planning approval remains extant, the duty upon the decision maker³ to have regard to the purpose of conserving biodiversity, require me to consider the scheme before me and its potential effects.
24. As such, given their age, the surveys carried out do not demonstrate satisfactorily whether any bats are present and the extent to which they may be affected by the proposed development. The proposal therefore conflicts with the biodiversity protection goals of CS Policy CS15, LP Policy ENV15 and the Framework.

Other Considerations

25. The appellant sets out that the additions to the previously approved scheme sought could be constructed under permitted development rights. However, there is no definitive information before me that the additions, including an outbuilding partly outside the existing residential curtilage, would be permitted development. In addition, given that the permission has not been implemented and no works have yet begun, permitted development rights for the previously approved dwelling do not at present exist.
26. Moreover, this fall back position, that the same scheme could be built under permitted development rights, does not represent development that would have a greater impact on openness or any other harm, compared to the proposal before me.
27. Consequently, even if I found that there was a real prospect of the fall-back position being implemented, it would not be demonstrably more harmful both visually and to the Green Belt than the proposal before me. For these reasons, I have given the fall-back position only limited weight in favour of the proposal.
28. The appellant points to a number of other examples of similar fall back positions accepted by the Council, including for the new dwelling built to the north⁴. Whilst in principle similar development should be treated in a consistent matter, as set out by the barrister advice⁵ and extract from the development control practice manual submitted, the weight to be given to such positions is a matter for the decision maker, and I have set out above why I have given this limited weight.

³ Including under Circular 06/2005, Conservation of Habitats and Species Regulations 2017 (as amended), Natural Environment and Rural Communities Act 2006 (as amended) and the Environment Act (2021).

⁴ Planning applications MO/2023/0308 - MO/2022/0665/PLA and MO/2023/1000 - MO/2023/1872.

⁵ Stephen Whale, Landmark Chambers, London, 16 January 2024.

29. The appellant points to the high quality design of the proposal, however it is not substantiated that this would be a significant improvement over the existing dwelling in terms of delivering an attractive residential development suitable for the sites rural location. Similarly, it is not substantiated how the replacement of one large, detached dwelling with a larger detached dwelling would affect positively the need for more market affordable housing in the district. Similarly, it has not been demonstrated that the proposal is necessary for the improvement to the existing parking arrangement, or for efficiency and profitability reasons.
30. The lack of harm identified in relation to matters such as privacy and impact upon the living conditions of neighbours are to be expected of any development and are not matters in favour of the proposal.
31. Employment opportunities would be created during the construction phase of the development. Given the scale of the proposal, the weight attributable to this matter is limited.

Green Belt balance and conclusion

32. The Framework is clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
33. I have found that the proposal would be inappropriate development in the Green Belt. In addition, it would result in a loss of openness to the Green Belt. Substantial weight is given to the harm to the Green Belt in accordance with paragraph 153 of the Framework. Given the importance given to the protection of biodiversity set out by the Framework, the potential harm to protected species and conflict with CS Policy CS15 and LP Policy ENV15 also carries significant weight.
34. I have given some weight to the factors in favour of the proposal, and conclude that, taken together, they do not clearly outweigh the harm arising from the proposal. Consequently, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist.
35. The proposed development would not accord with the development plan or national policy in relation to Green Belt. There are no other considerations which outweigh these findings. For the reasons given above, I conclude that the appeal should be dismissed.

B Phillips

INSPECTOR