



Appeal Decision

Site visit made on 31 October 2024

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 December 2024

Appeal Ref: APP/C3620/W/23/3336009

Brook Cottage, Horsham Road, Capel, Surrey RH5 5HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Nathan Craker (Elivia Homes Central) against the decision of Mole Valley District Council.
 - The application Ref is MO/2023/1233/OUT MAJOR.
 - The development proposed is for 46 dwellings with all matters reserved except access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is for outline planning permission with all matters reserved except access. Parameter plans indicate the location of development on the site, and indicative drawings, including layout and street scenes have been submitted. I have had regard to these so far as necessary.
3. Since the planning application was refused, The Mole Valley Local Plan 2020-2039 (the LP) was adopted on 15 October 2024. The Council provided comments on the changes to the policies and how this affected their opposition to the appeal. The appellant also provided comments in response to the Council's comments. I have had regard to both parties' observations in the determination of the appeal. A completed Unilateral Undertaking (UU) was submitted, dated 8 March 2024, and I have taken account of it accordingly.
4. The appellant supplied the Council with an Archaeological Desk-based Assessment. The County Archaeologist confirmed they were satisfied that archaeological investigation works could be secured by condition. The appellant also submitted a Technical Note 1: prepared by Motion in response to the objection raised by the Lead Local Flood Authority (LLFA). The LLFA confirmed that the Technical Note addresses its concerns. As a result, the Council no longer wishes to defend reasons for refusal 3 and 4. I have dealt with the appeal on this basis.

Main Issues

5. These are:
 - a) Whether the site is suitable for the proposed development, having regard to the Council's spatial strategy.
 - b) The effect of the proposal on the character and appearance of the area.
 - c) The effect of the proposal on biodiversity, with regard to protected species.

Reasons

Site and surroundings

6. Located to the southern edge of the village of Capel, the site is an open field of around 4.4 hectares. The appellant contends that the site is previously developed land (PDL). A small bungalow occupied the site historically, that has since been demolished. A replacement dwelling was granted planning permission, and the appellant provides some evidence of implementation of ground works. However, this permission was for one dwelling, with a 'red edge' occupying a small part of the eastern side of the site. Therefore, I do not consider that the whole site could be considered as PDL, meeting the definition in the National Planning Policy Framework (the Framework). Indeed, the aerial imagery shows some tracks laid out, but this does not indicate development, nor is there any planning history to support this assertion.
7. The proposal is for a residential scheme of 46 dwellings. The indicative plans detail the houses being located on the southern part of the site, with the northern part providing open space. Access would be taken from Horsham Road/Wolves Hill to the west of the site.

Spatial strategy

8. Policy H1 of the LP sets out Council's housing delivery strategy. This includes meeting the Council's housing requirement through various means, but relevant to this appeal would be 'dwellings delivered through other windfall sites'.
9. However, the site is in the 'Countryside Beyond the Green Belt'. Policy EN2 states that within the Countryside Beyond the Green Belt, the rural character and largely undeveloped nature of the countryside will be protected for its own sake, and development of new housing will be permitted only in locations which accord with Policies EN3 or H4 of the LP, or through redevelopment of PDL in accordance with part 3b of the policy.
10. The proposal is not within a rural village nor for rural exception housing, thus Policies EN3 or H4 of the LP would be irrelevant. Additionally, as set out above, the site is not PDL and cannot benefit from the Policy EN2 exception.
11. Consequently, owing to the location of the site outside of any defined settlement or village, the proposal would be unsuitable having regard to the settlement strategy. This would be contrary to Policy EN2 of the LP. Despite the Council claiming the proposal would be contrary to Policy H1 of the LP, I do not see how there would be any conflict, because this policy is concerned with housing delivery.

Character and appearance

12. The site is located to the south of Capel, a small village. Development in Capel is predominantly located on the western side of the village, with a couple of housing estates off the main street. The majority of development on the eastern side is noticeably different to the western side, being sporadically laid out, with houses generally having street frontages, or small enclaves of dwellings, and of lower density.

13. From the edge of Capel at Coles Hill, south to the roundabout, the road is heavily lined with well established trees and hedges, undeveloped to both sides, and this includes the site. Beyond the tree lined western boundary, the site is predominantly open pasture, and the immediate surroundings are largely undeveloped, such that the area has a semi-rural character with sporadic, low density development. Even the 3 large dwellings on the eastern side of the roundabout (to the south of the site) are set in spacious plots, that also front the road similar to those within the eastern side of the village.
14. The indicative layout proposes development to the southern part of the site only. This would be inevitably laid out in a higher, suburban density to accommodate the number of dwellings proposed within the parameters of development. A large gap between the development and the edge of Capel would remain undeveloped as open space, accommodating a play area. Whilst being amenity space, this gap in development results in the proposal appearing spatially isolated and dislocated from Capel.
15. Coupled with the suburban layout, the proposal would appear incongruous, at odds with the prevailing character and pattern of development, particularly on the eastern side of Capel. It would also be an overly intensive density and size in this location, introducing a suburban housing development that would not achieve a well-designed transition between the urban and rural environment. This fails to demonstrate a thorough understanding of the site and how it relates to the existing area.
16. The impacts would be localised, no concerns are raised in relation to the new access point, and the existing landscaping would offer some mitigation in terms of screening views from the road. However, these factors would not negate the harmful effect the proposal would have upon the spatial character and appearance of the area. Consequently, the proposal would fail to comply with Policies EN4 and EN8 of the LP, which together seek to ensure developments respect existing local character and are sensitive to their landscape context.
17. Even if I had concluded that the site was PDL, the scale, design and siting of the proposal would have an adverse impact on the rural character and largely undeveloped nature of the countryside, such that it would have failed to comply with Policy EN2 of the LP.

Biodiversity

18. The site is open undeveloped land, with further open land to the west and east, along with dwellings set within large landscaped gardens to the north and south. Thus, there are areas nearby, and indeed the site itself, that could support habitats for protected or priority species. Species such as great crested newts, badgers and bats, are protected by law and their presence on site, even if of low potential, is a material consideration.
19. The Preliminary Ecological Appraisal (PEA) by ECOSA Ltd¹ identified the site as being suitable to support roosting bats, foraging and commuting bats, breeding birds, reptiles, great crested newt, badger, hazel dormouse, European hedgehog and common toad. The PEA recommended that further ecological surveys be undertaken to establish the presence of the above species. An Interim Ecological Assessment Report (IEAR) by ECOSA Ltd² was submitted to

¹ 10th August 2023

² December 2023

the Council, but this did not carry out complete surveys, particularly in relation to bats and great crested newts.

20. For bats, the site has a moderate suitability for supporting foraging and commuting bats, and the IEAR details at 5.2 that *further ecological survey work will need to be undertaken prior to the submission of any planning application to allow the local planning authority to fully assess the potential effects of the proposals on protected species...The results of the additional survey work will be incorporated into an Ecological Impact Assessment (EcIA) report, which will provide an updated assessment of the ecological effects of the proposal and detailed mitigation, compensation and enhancement recommendations in light of the survey. The more detailed survey work recommended for the site are: Further bat activity surveys; Ground level tree assessment.*
21. For great crested newts, the IEAR details that great crested newt are assessed as being adversely impacted by the proposals, and a district level license (DLL) would be necessary to mitigate the effect. I have no evidence that the appellant has entered a DLL, nor if one would be granted that would adequately mitigate the risks at this site. Additionally, even though the proposal is for outline planning permission, mitigation may result in amendments to the scheme being necessary.
22. Thus, there is insufficient evidence before me that fully evaluates the presence of protected species, and although the appellant suggests a condition could be imposed, Circular 06/2005 advises that surveys should only be required by condition in exceptional circumstances. This would be *the* planning permission, and there are no exceptional circumstances here that would justify requiring the surveys by condition.
23. Therefore, I must apply the precautionary principle and find that the proposal could result in harm to protected species. This would be contrary to Policy EN9 of the LP which seeks to ensure that protected species and their habitats would not be adversely impacted by development. It would also be contrary to the requirements in the Framework that seek to protect and enhance biodiversity, and the legal obligations placed upon me as the Competent Authority.

Planning Balance

24. The proposal would conflict with the development plan as a whole.
25. Footnote 8 of Framework Paragraph 11 details that policies for applications involving the provision of housing are considered out of date in situations where: (a) the local planning authority cannot demonstrate a five year supply of deliverable housing; **or** (b) where the Housing Delivery Test (HDT) indicates that the delivery of housing was below 75% of the housing requirement over the previous 3 years.
26. Given the recent adoption of the LP, the Council has a 5 year supply of housing land, with some surplus supply. However, the HDT results for the past 3 years demonstrate an average under delivery at 70%. The Council detail that the housing requirement figure in the 2022 HDT is now out of date, owing to the adoption of the LP, but as it stands there is no updated position. Thus, paragraph 11 d) of the Framework, would currently apply. There are no policies

that would indicate a clear reason for refusal and thus the 'tilted balance' of 11 d) ii would apply.

27. The contribution towards the supply of housing and the provision of policy compliant affordable housing would be of substantial weight in favour. Additionally, the proposal would deliver social and economic benefits through the delivery of housing, such as communal open space and play areas with footpath links. This is of moderate weight. I also note the letters of support from residents.
28. However, there would be harm arising to the character and appearance of the area, and the effect of the proposal upon protected species is unclear, and I must apply the precautionary principle and find harm. These carry substantial weight against the proposal.
29. Furthermore, there would be conflict with the spatial strategy which governs the location of new housing. Whilst the Framework indicates that the policies for the provision of housing would be out-of-date owing to the HDT results, the LP is very recently adopted, allocates housing sites and demonstrates a deliverable 5 year housing land supply. This will make up for the previous failures to deliver housing. The Framework also places an emphasis upon the planning system being genuinely plan-led. To my mind, this means that the benefits of delivering housing in accordance with the spatial policies in the up-to-date LP are of considerable weight.
30. Consequently, in my judgement, the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
31. Therefore, there are no other material considerations that indicate a decision other than in accordance with the development plan.

Conclusion

32. For the reasons set out above, the appeal is dismissed.

Katie McDonald

INSPECTOR