
Appeal Decision

Site visit made on 6 November 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2024

Appeal Ref: APP/C3620/W/24/3343939

26 Marley Rise, Dorking, Surrey RH4 3DY

- 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 Alan Emmerson against the decision of Mole Valley District Council.
 - The application Ref is MO/2024/0257/PLA.
 - The development is change of use to extend residential curtilage by inclusion of land at rear of property into residential curtilage for use as a garden extension together with retention of outbuildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the 15 October 2024, the Council adopted the Mole Valley Local Plan 2020-2039 (MVLN). The MVLN replaces the Mole Valley Local Plan, October 2000 and The Mole Valley Local Development Framework Core Strategy, October 2009. The main parties were given an opportunity to provide comments on the relevant policies of the MVLN and I have taken these into account.
3. I observed during my site visit that the development was completed. I have determined the appeal on this basis.

Main Issues

4. The main issues are:
 - whether the appeal scheme would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, including assessing the effect of the appeal scheme on the openness of the Green Belt;
 - whether the development would conserve and enhance the landscape character and appearance of the area; and
 - if the appeal scheme is found to be inappropriate development, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the 'very special circumstances' required to justify the scheme.

Reasons

Whether inappropriate development

5. The extended garden land of the appeal site lies within the Green Belt. Policy EN1 of the MVLP states that the Green Belt will be protected against inappropriate development and that inappropriate development will not be permitted in the Green Belt unless 'very special circumstances' are demonstrated which outweigh the potential harm, including harm to openness of the Green Belt.
6. MVLP Policy EN1 lists a number of exceptions to the definition of inappropriate development, which will be permitted where they comply with other relevant policies in the plan. In particular, point 3(j) 'Other forms of development specifically identified through national policy as exceptions to the definition of inappropriate development, including changes of use and engineering operations which preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.' This is consistent with paragraph 155 of the Framework.
7. The extended garden is enclosed by timber fences and a gate and includes two domestic outbuildings. The gate, fences and outbuildings, due to their size, scale and appearance, result in a loss of spatial openness to the Green Belt. In addition, although views of the fencing and buildings are restricted by their backland location, and screening from other fences, outbuildings, and vegetation, within adjacent rear gardens, they are visible from neighbouring properties and their gardens. As such, there would be harm to the visual openness of the Green Belt and overall, the development does not preserve the openness of the Green Belt.
8. The extension of domestic garden, for residential use, into a previously undeveloped and wooded area of land, is in conflict with the Green Belt purpose of assisting in safeguarding the countryside from encroachment.
9. Consequently, for the above reasons, I conclude that the appeal scheme is inappropriate development in the Green Belt and is harmful to the openness of the Green Belt and the purposes it serves.

Landscape character

10. The appeal site is located within the Surrey Hills National Landscape (the SHNL). Policy EN8 of the MVLP states that the SHNL is a nationally important landscape designation and development proposals that fail to conserve and enhance the landscapes and scenic beauty within the SHNL, their cultural significance and wildlife habitats, will be refused.
11. The land at the rear of the residential properties within this part of Marley Rise comprises a wooded area within a rural setting. Woodland is one of the main features of the SHNL, as identified in The Surrey Hills Management Plan (2020 – 2025).
12. The development has resulted in the encroachment of residential garden land into the wooded area. The erection of outbuildings and increased fencing results in additional built development on land that was previously free from development.

13. Furthermore, the extension of the garden and repositioned fencing is an anomaly compared to the boundary lines of neighbouring properties. As a result, it has a jarring appearance, which is not in keeping with the character and appearance with the residential pattern of development along this part of Marley Rise. Therefore, although only a small encroachment, there is harm to the wooded rural landscape and its appearance, nonetheless.
14. Consequently, for the above reasons, I conclude that the development would fail to conserve and enhance the landscape character and appearance of the area. Therefore, it would be contrary to Policy EN8 of the MVLP.

Other considerations

15. The extended land provides additional domestic garden for the occupiers of the dwelling to enjoy. The shed provides garden storage space, and the log cabin provides additional living space for the occupiers of the house. In particular, the log cabin is used as alternative space for home working, as well as a music room, which benefits the occupiers of the property.
16. It has been brought to my attention that a member of the appellants' family (a child) has a protected characteristic for the purposes of the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010.
17. The log cabin is used to facilitate music therapy by a child residing at the property. Accordingly, I am mindful of Article 3(1) of the United Nations Convention on the Rights of the Child, which provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. Furthermore, under the PSED, I must have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
18. Having regard to all of the above, weight is clearly attributed in favour of the development, particularly having regard to the use of the site by a child with protected characteristics. As such, the best interests of the child are at the forefront of my determination of this appeal. However, the weight I can attribute to these benefits is tempered as I have limited information which demonstrates why the log cabin cannot be sited within the original garden, thus still providing the accommodation to benefit the child. Therefore, I am not persuaded from the information before me, that the best interests of the child could not be achieved by a less harmful way of providing the accommodation.
19. There is no dispute between the parties that the Council has raised no concerns with regard to the effect on the living conditions of nearby residential properties. However, this is a neutral matter which I attribute no weight.
20. Reference has been made to previous garden extensions within the row of properties on Marley Rise. In particular, planning permission, reference MO/2019/1455CU, at the neighbouring property, 25 Marley Rise (No 25), for 'Change of use to extend residential curtilage by inclusion of land at rear of property into residential curtilage for use as a garden extension'. However, I observed during my site visit that the garden of the appeal property extended much further into the wooded area than the garden of No 25. Also, very limited information has been provided of the circumstances of that case and

those of the other extensions of garden land into the Green Belt, referenced by the appellant. Accordingly, as I am required to do, I have determined the case before me on its own merits.

21. While I acknowledge the appellants concerns about recent Green Belt boundary alterations which have been agreed elsewhere, it is not for me to comment on the circumstances surrounding those alterations which have been agreed in the MVLP.

Other Matters

22. The appellant raises concerns about the handling of the planning application by the Council and the influence of civil disputes and criminal investigations on their decision, as well as advice previously received from the Council. However, such matters fall outside the scope of this appeal and do not affect my consideration of the planning merits of the proposed development.

Green Belt Balance

23. Policy EN1 of the MVLP states that inappropriate development will not be permitted in the Green Belt, unless very special circumstances are demonstrated which are concluded to outweigh the potential harm, including harm to the openness of the Green Belt and the purposes of including land within it. This is consistent with paragraphs 152 and 153 of the Framework.
24. The proposed development would be inappropriate development in the Green Belt and therefore harmful by definition. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It identifies openness as an essential characteristic of the Green Belt. The Framework states at paragraph 153 that substantial weight is given to any harm to the Green Belt. I therefore place substantial weight on the harm by inappropriateness and harm to openness and the purposes of the Green Belt that I have identified. The development is also harmful to the landscape character of the SHNL and collectively I attach substantial weight to these matters.
25. I have given some moderate weight to the other considerations in favour of the appeal scheme, as set out above. However, they do not clearly outweigh the harm arising from the development.
26. Consequently, the 'very special circumstances' necessary to justify inappropriate development in the Green Belt do not exist. Therefore, the development would thus conflict with Policies EN1 and EN8 of the MVLP and the Green Belt protection aims of the Framework.

Conclusion

27. The development conflicts with the development plan taken as a whole and material considerations do not indicate that the decision should be made other than in accordance with the development plan.
28. For the reasons given above, I conclude that the appeal should be dismissed.

N Bromley

INSPECTOR