



Appeal Decisions

Site visit made on 20 January 2025

by **J Moore BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 March 2025

Appeal A Ref: APP/R3650/W/23/3331714

Orchard Cottage, Rock Hill, Hambledon, Godalming GU8 4DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (The Act) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Guy La Costa against Waverley Borough Council.
- The application Ref is WA/2022/03075.
- The application sought planning permission for : *Demolition of Orchard Cottage and the erection of a replacement dwelling on a one for one basis elsewhere within the existing curtilage and to the south of Hambledon Park together with sensitive landscaping of the new dwelling and reinstatement of the parkland setting to Hambledon Park following the demolition of Orchard Cottage* without complying with a condition attached to planning permission Ref WA/2007/0188, dated 9 April 2008.
- The condition in dispute is No 3 which states that: *Within 3 months of the occupation or first use of the dwelling hereby permitted, Orchard Cottage, the adjacent garage and associated outbuildings shall be demolished and all demolition materials removed from the site.*
- No explicit reason for the condition is given

Appeal B Ref: APP/R3650/W/24/3346623

Orchard Cottage, Rock Hill, Hambledon, Godalming GU8 4DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (The Act) against a refusal to grant planning permission.
- The appeal is made by Mr Guy La Costa against the decision of Waverley Borough Council.
- The application Ref is WA/2023/02374.
- The development proposed is Retention of Orchard Cottage to provide affordable rented accommodation within the parish of Hambledon.

Decisions

1. Appeal A is dismissed and planning permission is refused.
2. Appeal B is dismissed.

Preliminary and Procedural Matters

3. The original permission that is the subject of Appeal A was granted on appeal Ref: APP/R3650/A/07/2042791, which concerned a replacement dwelling scheme, whereby a dwelling would be erected elsewhere within the grounds of Hambledon Park to replace Orchard Cottage. Appeal A concerns a section 73 application to remove the condition requiring the demolition of Orchard Cottage, and Appeal B concerns the refusal of an application for planning permission to retain Orchard Cottage. Each appeal would result in the same outcome, such that Orchard Cottage would be retained and returned to residential use for affordable housing. I have considered each appeal on its own merits, but to avoid duplication I have dealt with the two together, except where otherwise indicated.

4. For both appeals, the address in my banner heading for Orchard Cottage is confirmed as the correct address by the appellant. The address of the original permission is Hambledon Park, Vann Lane, Hambledon GU8 4DY. For the avoidance of doubt, in my banner heading for Appeal A, I have used the precise description of development for the original permission that was granted on appeal, rather than the description used on the appealed application form. Furthermore, the appeal decision which granted the original permission does not provide an explicit reason for condition No 3, and this is reflected in my banner heading.
5. In respect of Appeal A, an application form dated 28 November 2022 was submitted under s73 of the Act and sought the removal of condition No 3 of the original permission. The appeal form indicates the appeal was made on the grounds that the Council had refused the application. However, there is no decision notice before me, but rather an email dated 28 April 2023 from the Council to the appellant which indicates (among other things) that the application was received on 29 November 2022, and was deemed invalid by the Council, on the grounds that it would be beyond the scope of a s73 application and unlawful.
6. In any event, it is clear that the application is classified as a non-validated application, and no decision (other than that regarding its validity and/or lawfulness) was made by the Council on the application. The time periods for decisions set out under Article 34 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) therefore apply. This enables an appeal to be made under section 78 of the Act, and I am satisfied that the appeal was submitted within the relevant time frame in accordance with Article 37 of the DMPO.
7. On 12 December 2024, the National Planning Policy Framework (the Framework) was revised. The main parties were given an opportunity to comment on this matter and I have taken account of the comments made. The further amendment made on 7 February 2025 does not constitute a change to policy, and therefore no party is prejudiced by a lack of consultation on this amendment.
8. The evidence before me refers to the Surrey Hills Area of Outstanding Natural Beauty (AONB). In November 2023, the National Landscapes Association reported that all such designated areas had become National Landscapes, and they are referred to as such in the Framework. The legal designation and policy status of such areas is unaffected, whichever term is used. As the appeal site is within an AONB/National Landscape, I have had regard to the Protected Landscapes Duty¹ which requires relevant authorities to seek to further the statutory purposes of a protected landscape in exercising or performing any functions in relation to it.
9. Orchard Cottage lies just beyond the boundary of the 'Hambledon A' Conservation Area (CA). The original permission includes land within the CA. I have therefore had regard to s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

¹ As per s245 of the Levelling-up and Regeneration Act 2023 enacted on 26 December 2023, which amends the statutory duty under the National Parks and Access to the Countryside Act 1949

Background and Main Issues

10. The appeal site is within the Green Belt and within the Surrey Hills National Landscape (SHNL) and Area of Great Landscape Value (AGLV). The evidence indicates that the replacement dwelling approved by the original permission has recently been completed, but the evidence is not clear whether it is now occupied, and I was unable to verify occupation during my visit. The evidence before me does not refer to any enforcement proceedings. During my visit it was clear that Orchard Cottage was unoccupied.
11. The original permission is relevant to both appeals before me, as the appellant relies on it as a material consideration in both appeals in terms of the potential benefits that retaining Orchard Cottage might bring, and the Council relies on it as a significant factor in its consideration of both appeals.
12. As set out in my preliminary and procedural matters, there is no explicit reason given in the appeal decision for condition No 3 of the original permission. In summary, although that Inspector found that the proposal was inappropriate development in the Green Belt, a number of other considerations clearly outweighed the totality of harm found, such that they amounted to the very special circumstances necessary to justify the proposal. These considerations included the fact that the proposal would be an alternative to Orchard Cottage, the design of the proposed replacement dwelling, the effect of the proposal upon the Surrey Hills AONB and AGLV and the existence of an extant alternative permission. Consequently, I consider the reason for the disputed condition in Appeal A to be in the interests of the openness of the Green Belt, the character and appearance of the area, and the landscape character of the SHNL and AGLV.
13. Given the issues raised in my preliminary and procedural matters above, then in the first instance, Appeal A falls to be determined on whether the Council was in receipt of a valid planning application that it ought to have registered and processed. If the answer to this is in the affirmative, it will then be necessary to consider the merits of the application, as a decision was not made within the prescribed period.
14. In the event that Appeal A succeeds on its first main issue, then the main issues for both appeals largely overlap. In this regard, I have used similar numbering, so that the main issues can be considered together to avoid duplication, and I will conclude for each appeal accordingly. The main issues for Appeal A are:
 - whether there was a valid planning application before the Council, and if so, whether the application falls within the scope of Section 73 of the Act; and if so,
 - whether it would be reasonable and necessary to remove the condition, having regard to the interests of:
 - i. the character and appearance of the area, including the conservation and enhancement of the SHNL and AGLV; and
 - ii. the Green Belt, with particular regard as to whether it would result in inappropriate development, having regard to national and local policies, including the effect upon openness where relevant; and if so,
 - iii. whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, including the

proposed provision of affordable housing, so as to amount to the very special circumstances required to justify the proposal.

15. The main issues for Appeal B are:

- i. the effect of the proposal upon the character and appearance of the area, including the SHNL and AGLV;
- ii. whether the proposal would be inappropriate development in the Green Belt, having regard to national and local policies, including the effect upon openness where relevant; and if so
- iii. whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, including the proposed provision of affordable housing, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Appeal A - validity and section 73

16. Requirements in respect of planning applications are set out in the Act with further detail set out in DMPO. In summary, a local planning authority shall not entertain an application for planning permission unless such requirements have been satisfied, and a local planning authority is required to acknowledge an application as soon as it is reasonably practicable. After such an acknowledgement, where the local planning authority consider that the application is invalid, they must as soon as reasonably practicable, notify the applicant that the application is invalid.
17. There is no substantive evidence before me to indicate that the application failed to meet the validation requirements of the Act and the DMPO, including any local validation requirements. There are no formal notices before me that may have been served pursuant to any validation dispute. The Council advised that it considered the application to be beyond the scope of a s73 application and advised that a fresh application would be required. There is no evidence to suggest that the Council relied on any power to decline to determine an application under sections 70A-70D (inclusive) of the Act.
18. Section 73 of the Act concerns applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. Sub-section (2) sets out that when determining such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
 - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
 - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
19. There is a significant body of caselaw relating to s73 applications, largely relating to those which have been determined, rather than any deemed invalid. Nonetheless, such caselaw is relevant to the case before me, which I summarise below.

20. In *Pye*², it was held that the purpose of a s73 application is to obtain relief from conditions without the need to submit a second full application; and that the original planning permission comprises not merely the description of the development in the operative part of the planning permission, but also the conditions subject to which that development was permitted to be carried out. It was further held that the ‘operative part of the planning permission’ refers to the description of the development contained within it. The courts have also held that the consequences of removing or varying a condition are a material consideration in whether permission under s73 should be granted³.
21. Both the *Arrowcroft*⁴ and *Finney*⁵ judgements concerned applications to vary conditions. In *Arrowcroft*, it was held that a local planning authority is able to impose different conditions upon a new planning permission, but only if they are conditions which the council could lawfully have imposed upon the original planning permission in the sense that they do not amount to a fundamental alteration of the proposal put forward in the original application. The *Finney* judgement, upon which the Council relies, held that the variation in a condition would have resulted in development which would conflict with the description of development as permitted, and the court made clear that s73 cannot be used to change the description of development.
22. The appellant relies on *Reid*⁶, which concerned the removal of a condition restricting use, and whether its removal would enable self-catering holiday units to be used as permanent residential dwellings, such that it would be contrary to the description of development. However, it was found that when a condition is removed, the operative part of the permission remains intact, albeit in an unconditional way. If the restrictive condition was removed, the way the development could change would have nothing to do with the description, but because the condition preventing the benefit of the Use Classes Order would be removed. It was held that what can be done with the use of the land may not be exhaustively written into the description but may arise by the operation of law (i.e. a lawful change of use to another purpose within the same Use Class by the operation of s55(2)(f) of the Act. Therefore, it is the decision-maker’s function to consider, as a matter of planning judgement, the planning merits of removing a condition.
23. The *Armstrong*⁷ judgement concerned the variation of a plans condition whereby the design of a house would be changed. It was held that there was no authority that indicates a s73 application which is consistent with the “operative part” of a planning permission is nonetheless outside the scope of s73 of the Act if it is considered to involve a “fundamental variation.” In *Fiske*⁸, it was held that “*Although a substantial or fundamental alteration may be sought under s.73, that does not dictate the outcome of the application. The planning authority has ample jurisdiction to determine the planning merits of any such application.*” Further, that “*if Parliament had wished to prohibit the imposition under s.73 of conditions which make a “fundamental” or “substantial” alteration to a permission without changing the operative part, it would have said so in the legislation*”.

² *Pye v Secretary of State for the Environment & North Cornwall District Council* [1998] 3 PLR 76

³ *Allied London Property Investment Ltd v Secretary of State for the Environment & Another* (1996) 72 P&CR 327

⁴ *R. v Coventry City Council Ex p. Arrowcroft Group Plc* [2001] P.L.C.R. 7

⁵ *John Leslie Finney vs Welsh Ministers & Others* [2019] EWCA Civ 1868

⁶ *Freddie Reid v Secretary of State for Levelling Up Housing and Communities & Another* [2022] EWHC 3116 (Admin)

⁷ *Armstrong v Secretary of State for Levelling Up, Housing and Communities & Cornwall Council* [2023] EWHC 142 (KB)

⁸ *Test Valley Borough Council v Chala Fiske* [2024] EWCA Civ 1541

24. Drawing all of the above together, whether a s73 application is the appropriate one goes to its merits rather than its validity in terms of the Act and the DMPO. In the case before me, the removal of the condition could effectively negate the terms upon which the original permission was sought and granted. Given the previous Inspector's findings, the proposal to remove the condition could alter the Green Belt balance or overall planning balance from a historical perspective. However, this does not set aside the fact that a local planning authority "shall consider only the question of the conditions subject to which planning permission would be granted", in accordance with the Act, having regard to the development plan and any material considerations, including the effect of removing the condition.
25. For the reasons above, I therefore conclude that the application was validly made, and ought to have been determined. For these reasons, Appeal A succeeds on the first main issue, and therefore I assess both appeals in relation to their similar main issues accordingly.

i) Character and appearance (Appeals A and B)

26. Hambledon is not a defined settlement within the development plan and is therefore in the countryside and within the SHNL and AGLV. Chapter 15 of the Framework seeks to conserve and enhance the natural environment, and paragraph 189 of the Framework requires that great weight should be given to conserving and enhancing landscape and scenic beauty in (among other things) National Landscapes, which have the highest status of protection in relation to these issues.
27. Policy RE3 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites 2018 (LPP1), seeks to ensure the protection and enhancement of the character and qualities of the AONB as a priority, including the application of national planning policies, and applies the same principles to the AGLV as a local landscape designation, pending a conclusion of a boundary review of the AONB. LPP1 Policy TD1 seeks to ensure high quality and inclusive design that responds to the distinctive local character of the area in which it is located. Policy DM4 of the Waverley Local Plan – Part 2: Site Allocations and Development Management Policies (LPP2) seeks to ensure high quality design and sets out that development should respond effectively to its surroundings, reinforcing local distinctiveness and landscape and historic townscape character. Further, that the principles of good design should be incorporated with reference to various factors, including making the most efficient use of land, while being sympathetic and responsive to the prevailing pattern of development; and that regard will be had to the cumulative effects of development on the character of an area. LPP2 Policy DM1 seeks to ensure that development should not cause harm to existing environmental assets (including those of townscape or landscape value) and maximise opportunities to enhance such assets. These policies are in strong conformity with the Framework.
28. Among other things, Policies P2 and P3 of the Surrey Hills AONB Management Plan 2020-2025 (SHMP) seek to ensure that development proposals respect local distinctiveness and the special landscape character of the locality, giving particular attention to ridgelines, public views and tranquillity. Strict control of the use and colour of materials is used to ensure buildings harmonise with their surroundings, to avoid buildings being incongruous, and development proposals should take any opportunities to enhance their setting. SHMP Policy P1 sets out that in balancing different considerations associated with determining planning applications and development plan land allocations, great weight will be attached to any adverse

impact that a development proposal would have on the amenity, landscape and scenic beauty of the AONB and the need for its enhancement.

29. Hambledon appears as a largely dispersed settlement with properties sited along country lanes, generally following a linear/ribbon form. Properties in the area are predominantly but not exclusively two-storey, and generally detached with architectural detailing, many in the Arts and Crafts style. External materials vary in form and palette but are predominantly of red/earthy tones to include brick, traditional red clay hanging tiles, timber weatherboarding and clay roof tiles. Although render, slate roof tiles and painted brickwork are present in the wider area, they are far from common.
30. Orchard Cottage is a bungalow with a detached garage. Both structures are constructed of pre-cast concrete panels painted in a pale colour, giving a strong utilitarian character and little architectural merit. As such these buildings appear in stark contrast to the predominant character. No other example is put before me of a dwelling of such character and appearance, and I saw no similar examples during my visit to the area. Due to the level and rising nature of the land, Orchard Cottage and its detached garage appears to be cut into the hillside, with a short retaining wall and path along its rear elevation, with land rising steeply to its rear, to include a greenhouse. There is a significant gap in built form towards the north, where properties appear in proximity to a Church, with wooded areas to the northwest.
31. The appellant's Landscape Report indicates that the area falls within the GW7 Wormley East Wooded Greensand landscape character area (LCA), whose key characteristics include (among other things), a twisting topography and wooded nature, with a small hamlet (Beech Hill) at its centre. Elsewhere within the LCA, 'the settlement is more scattered, and a rural, relatively tranquil landscape, woodland encloses the area and aids its sense of remoteness'.
32. The appeal site is close to the central area of the village, where properties are generally clustered around the convergence of lanes. This central area is included within the 'Hambledon A' Conservation Area (CA). However, Orchard Cottage is outside of the CA boundary, such that it is farther north of the linear form of development within the central part of the settlement and appears as part of the hillside landscape. Orchard Cottage is well set back from the tree lined highway and sited perpendicular to it. It therefore forms part of the more dispersed settlement pattern, appearing somewhat isolated, despite its access being shared with a nearby property. For these reasons, I do not agree with the findings of the appellant's Hambledon Village Character Assessment report that Orchard Cottage is located within the centre of the village and entirely consistent with the existing built form and character of the village.
33. Due to its siting, Orchard Cottage appears in limited views from Hambledon Road. The evidence before me indicates that the main parties agree that the proposal would not harm the setting of the CA, and I find no reason to consider otherwise. However, the long-distance path (Greensand Way) runs along the eastern side of Orchard Cottage at a height above the highway, such that Orchard Cottage appears well in view despite the presence of trees. The path continues across open land and beyond Greenside Ridge, towards the north. While long distance views are limited, nonetheless this path allows residents and visitors to experience the landscape and scenic beauty of the SHNL.

34. The main parties agree that Orchard Cottage would not be an isolated home in the countryside in the terms of paragraph 84 of the Framework and part a) of LPP2 Policy DM15 and I find no reason to consider otherwise. Nonetheless, it has a rather isolated appearance within the wider landscape, and detracts from the landscape of the SHNL, due to its poor architectural merit and utilitarian appearance. In my judgement, it makes a negative rather than a neutral contribution to the character and appearance of the wider area and the SHNL.
35. The proposals would result in various works to refurbish the vacant building, including altered window openings, replacement doors and windows, new slate roofing and external render. Although these works would improve the appearance of the building, the use of render and slate tiles would not be in accordance with the predominant form and palette of materials in the area.
36. The proposal would result in the loss of two self-seeded trees sited near to the existing building and garage. A landscaping scheme is proposed to include native species of hedging and trees, including semi/heavy standards and orchard/fruit trees. Although such planting would resonate with the property name, it has not been robustly demonstrated that orchard planting would reflect any once common planting within this part of the SHNL. The appellant's evidence indicates that the proposed 40m length of hedge planting would help to define the garden space around the property. However, this would also provide a degree of definition of curtilage, giving the site a less open appearance which presently arises from its isolated position within a largely grassed landscape. Overall, the landscaping scheme would enhance the immediate setting of the building.
37. In summary, the proposals would result in a building remaining within the landscape, with an appearance that would still be incongruous to the predominant style. There would be an increase in domestic activity, with associated noise that would otherwise not be present, thus affecting the special quality of tranquillity within the SHNL in proximity to a long-distance footpath, where views of the dwelling occur, and from where the tranquil nature of the countryside would be expected to dominate the enjoyment of the area. Such an effect would not be too different from its previous occupation as a dwelling. The proposed external materials would not respect the predominant materials of the area, but the landscaping scheme would provide a degree of enhancement to the SHNL/AGLV.
38. However, the fact of the matter is that the original permission is a significant material consideration in the appeals before me, and LPP2 Policy DM4 requires that regard be had to the cumulative effects of development on the character of an area. The demolition of Orchard Cottage and its outbuildings forms one part of the original permission as sought and granted, which included a replacement dwelling on a one for one basis and its landscaping, and the reinstatement of the landscape following the demolition works.
39. The previous Inspector found (among other things) that the proposed replacement dwelling would be two storeys, in the local vernacular style, sited along the road (similar to a gatehouse) and in less prominent view than Orchard Cottage, such that it would be more in keeping with the settlement pattern and the landscape character of the SHNL (then AONB). The removal of Orchard Cottage and its outbuildings and the reinstatement of the landscape were found to be a benefit of the original permission, such that the scheme as a whole would enhance the SHNL

and AGLV. I find no reason to disagree with the findings of the previous Inspector in this regard.

40. The effect of each proposal would be to prevent this enhancement in its entirety as Orchard Cottage and its outbuildings would physically exist and the landscape would not be reinstated. As both dwellings would exist, this would result in a cumulative increase in built form and domestic activities within the SHNL. Consequently, the retention of Orchard Cottage would neither conserve nor enhance the SHNL and would not further its statutory purpose. The proposed landscaping scheme would not sufficiently mitigate the harm that would arise by the retention of Orchard Cottage in such circumstances.
41. In addition, the SHMP draws attention to concerns arising from the cumulative effects of many, often small, developments over time, such that they reduce the landscape and scenic beauty of the Surrey Hills and spoil it for future generations. Each proposal would effectively exacerbate this concern.
42. For the above reasons, the material consideration of the original permission indicates that each proposal would result in a significant conflict with policies to conserve and enhance the SHNL. The policies of the Framework also require me to apply great weight to these issues, making clear that National Landscapes benefit from the highest protection in relation to such matters.
43. I therefore conclude that the proposals would fail to respect the character and appearance of the area and would fail to conserve or enhance the SHNL and AGLV, in conflict with LPP1 Policies TD1 and RE3; LPP2 Policies DM1 and DM4. In addition, the proposals conflict with SHMP Policies P1, P2 and P3. For Appeal A, I further conclude that it would not be reasonable or necessary to remove the disputed condition in the interests of the character and appearance of the area, including the conservation and enhancement of the SHNL and AGLV.

ii) Whether inappropriate development (Appeals A and B)

44. The Government attaches great importance to Green Belts. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; and the essential characteristics of Green Belts are their openness and their permanence. Further, that when considering a planning application, local planning authorities (and therefore by extension an Inspector) should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness. '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.
45. LPP1 Policy RE2 is in conformity with the Framework, setting out the development is inappropriate in the Green Belt unless very special circumstances are demonstrated, and that proposals will be permitted where they do not conflict with the exceptions listed in national planning policy.
46. The Framework exception at paragraph 154 d) concerns the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. At the time of the original permission, PPG2⁹ was in force, which provided for an exception for the replacement of an existing dwelling,

⁹ Planning Policy Guidance 2: Green Belts

providing it was not materially larger. In this regard, the exception at paragraph 154 d) of the Framework is somewhat similar, even though PPG2 refers to a dwelling rather than a building. In this regard, the effect of the proposals would be such that there would be no 'replacement' building. However, I am required to determine the proposals in the context of current policy.

47. Paragraph 154 f) of the Framework refers to limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites). Both proposals seek to retain Orchard Cottage for affordable housing at 20% below local market rent. The appellant claims that each proposal is in effect a 'Build to Rent' scheme, where the landlord need not be a registered provider.
48. LPP1 Policy AHN2 concerns rural exception sites. It sets out that where there is a genuine local need for affordable housing which cannot be met in some other way, small scale developments of affordable housing may be permitted on land that is within, adjoins or is closely related to the existing rural settlement, provided that (among other things), the development is small in scale, and management arrangements exist to ensure that all of the affordable dwellings remain available on this basis to local people in perpetuity. Other parts of LPP1 Policy AHN2 refer to the character of the village and the effect on the landscape, which I have considered in the previous main issue.
49. Of itself, a single unit is small in scale and Orchard Cottage is closely related to a rural settlement. The Council accepts that there is local housing need for affordable accommodation, and there are limited opportunities to deliver such housing. I find no reason to consider otherwise. However, it has not been robustly demonstrated that each proposal is the only way to achieve affordable housing in the area.
50. The appellant draws my attention to the fact that LPP1 Policy AHN2 does not include provision for "Affordable Private Rent". The Framework defines this within sub-section b in the definition of Affordable Housing as: *'Other affordable housing for rent: meets (a) the rent is set in accordance with the Government's rent policy for Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).'*
51. The Framework defines 'Build to Rent' as *"purpose built housing that is typically 100% rented out. It can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control."* There is no substantive evidence before me to demonstrate how the proposals would comply with the Planning Practice Guidance (PPG) on Build to Rent (2018). It seems to me that as the proposals concern an existing building, this would not be 'purpose built'. In such circumstances, the landlord would need to be a registered provider.

52. Two planning obligations are before me - one for each scheme, in the form of a unilateral undertaking (UU) under s106 of the Act, which the appellant claims would allow the property to remain at an affordable level for future eligible households. However, each UU does not include effective provisions. For example, the plan within the UU is not the same as that edged red in the planning application, such that it excludes a significant proportion of land towards the east. In such circumstances, it is not clear that any tenancy would have use of sufficient amenity space in quantitative or qualitative terms. The owners' covenants refer to paragraphs 2 and 3, but there is no paragraph 3, such that it is not sufficiently clear what provisions the covenants are subject to.
53. While the list of terms for tenancy is not exhaustive in the UU, it is not sufficiently clear. For example, there is no provision for the duration of tenure, nor for eligible criteria, whether by definition or by way of any agreement with the local planning authority. While there is provision for clawback in the event that no tenant can be found, there are no provisions defining the marketing period or the means of marketing the property, nor any definition for the term 'Waverley' in paragraph 2.1. For these reasons, the proposals do not include a suitable mechanism to secure the proposed affordable housing. Furthermore, while each UU references a relevant title, no copy of title has been provided to the appeal. The UU for Appeal B defines the term "principal planning permission" (as per the details relating to Appeal A concerning the s73 application), but the term does not appear to be used in either UU. This seems to be superfluous. Drawing all the above together, I am not satisfied that the proposals would meet the exception at paragraph 154 f) of the Framework.
54. Paragraph 154 h) subsection iv of the Framework concerns the exception for the re-use of buildings. The proposals would re-use a vacant building. There is no dispute that the property is not of permanent and substantial construction, and I find no reason to consider otherwise. Such development is not inappropriate development providing it preserves the openness of the Green Belt and does not conflict with its purposes, and I shall return to this matter later in my decision.
55. The appellant's submissions also consider the exception for limited infilling in villages, as referred to in paragraph 154 e) of the Framework. However, as the appellant acknowledges, the building exists – so it would not be reasonable to consider it as infill development.
56. Furthermore, the appellant considers that the proposal falls to be considered as an exception at paragraph 154 g) of the Framework, which concerns limited infilling or the partial or complete redevelopment of previously developed land (PDL) (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt. Although the appellant draws my attention to case law¹⁰, where it was held that residential gardens are not excluded from the general definition of PDL, the Framework definition is clear that residential gardens in large built-up areas are excluded. Hambledon Park and Orchard Cottage are clearly not within a large built-up area and therefore meet the definition of PDL. Consequently, this exception would apply to the proposals.

¹⁰ Dartford BC v SSCLG [2017] PTSR 737; Dartford BC v SSCLG [2017] EWCA Civ 141

Openness

57. An assessment of openness is required for the exceptions concerning the re-use of buildings and for PDL. Orchard Cottage is a modest structure within the grounds of a larger dwelling, with a detached garage. There is a degree of hardstanding in the form of the driveway and in front of its main elevation. The property appears partly set within the rising land to the rear, with a narrow pathway and short retaining wall along its rear elevation with steeply rising land behind. Of itself, the proposals would not significantly change the spatial presence of Orchard Cottage, as there would be a canopy above its entrance door, and a chimney and external coal store would be removed. Domestic activities arising from its occupation would not be significantly different to that when it was previously used as a dwelling.
58. However, In the context of the original permission, two dwellings would exist rather than one. This would not preserve the openness of the Green Belt, due to a cumulative increase in built form and domestic activity, such that it would undermine its purpose to protect the countryside from encroachment. Nonetheless, in terms of the exception for PDL under paragraph 154 g) of the Framework, the effect upon openness would fall short of the substantial level of harm required to be considered inappropriate development.
59. For the reasons above, I therefore conclude that the proposals would not result in inappropriate development in the Green Belt, and they accord with LPP1 Policy RE2. In terms of Appeal A, the condition would still be reasonable and necessary in the context of the exception for a replacement building in the Green Belt. However, the material considerations of the Framework indicate that the removal of the condition would accord with the exception for PDL at paragraph 154 g) of the Framework. Consequently, the removal of the condition would not be unreasonable in such circumstances. Given these conclusions, it is not necessary for me to consider whether very special circumstances exist for either appeal.

Other Matters

60. Paragraph 161 of the Framework encourages the reuse of existing resources. Taken together, LPP1 Policies CC1 and CC2; and LPP2 Policy DM2 support development where it contributes to mitigating and adapting to impacts of climate change, including measures which provide high standards of sustainable design and construction, reduce the level of greenhouse gas and CO² emissions, and the use of renewable/low carbon technologies. The evidence indicates that proposed works and energy saving features to Orchard Cottage would result in significant energy enhancements which would conform to the Council's guidance¹¹ and could be secured by condition. Although a category A rating is considered theoretically possible, this has not been robustly demonstrated and as such it is by no means certain that such works and/or features would be net zero carbon. Consequently, these matters are policy requirements of development and not a benefit as such.
61. The appellant suggests that the retention of Orchard Cottage would have implications for embodied and operational CO² emissions, based on the reported findings of the Building and Social Housing Federation (BSHF) that well-insulated new homes eventually make up for their high embodied energy costs through lower operational CO² over a fifty-year timeframe, and that refurbished homes can be just as efficient as new homes over a similar timeframe. As a matter of principle, I find

¹¹ Climate Change and Sustainability Supplementary Planning Document 2022, Waverley Borough Council

no reason to consider otherwise, and I note there is some support from interested parties for the proposal on sustainability grounds and as it is proposed for affordable housing.

62. Based on the BSHF reported findings, the appellant considers that the proposal to retain Orchard Cottage would save about 35 tonnes of total lifetime CO² emissions, which would compare favourably to the estimated 150-270 tonnes of lifetime CO² emissions for a new build property. Further, if Orchard Cottage were to be demolished, such activity would result in further CO² emissions; and the reinstatement of the land would require the importation of several hundreds of cubic metres of soil to reform the hillside.
63. However, it is not clear how typical Orchard Cottage is compared to the properties studied by the BSHF; the CO² emissions from demolition activity are unquantified; and there is no robust evidence to demonstrate that such a volume of material would be required to reinstate the landscape. Moreover, no account appears to have been taken of the effect of the construction of the replacement dwelling, which on the appellant's own evidence could be in the region of 150-270 tonnes. It seems to me that in such circumstances, the retention of Orchard Cottage could likely result in an overall net increase in lifetime CO² emissions. For these reasons, the potential savings in CO² emissions attract limited positive weight.
64. Paragraph 125 c) of the Framework sets out that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused. However, the support of the Framework is not unfettered in this regard. Paragraph 124 and footnote 49 seek to ensure that planning decisions promote the effective use of land, while safeguarding and improving the environment (and other things) in a way that makes as much use as possible of previously developed or brownfield land - except where this would conflict with other policies in the Framework. As I have found that the proposal would conflict with the Framework's policies for National Landscapes, I do not apply substantial weight to the use of PDL in such circumstances.
65. The proposals concern a small site that could assist in meeting housing needs which could be delivered quickly. The Council cannot demonstrate a five-year supply of deliverable housing sites, with the supply given to be about 3.89 years. The proposals would result in a net addition of one unit. This would support the government's objective to significantly boost the supply of land for homes, but this benefit would be limited in scale. As I have found that the proposals would not provide a suitable mechanism to secure affordable housing, I attach very limited weight to this potential benefit. Temporary economic benefits would arise during the works, with permanent benefits arising from household expenditure thereafter, but these would be limited by the scale of the development.
66. The appellant suggests that the proposals would include an electric vehicle charging point. This can be secured by condition. The landscaping scheme would enhance the existing setting of Orchard Cottage and would assist in increasing biodiversity. However, these matters are policy requirements of development, and as such they are not a benefit. These matters are therefore neutral factors in my assessment, attracting no weight for or against each proposal. For the avoidance of doubt, each proposal is exempt from mandatory biodiversity net gain.

67. The Council advises that the site is within the Wealden Heaths Special Protection Area (SPA) and that the retention of Orchard Cottage is not likely to result in a significant increase in the number of people permanently at the site, and therefore would not have a likely significant effect on the integrity of the SPA, and an appropriate assessment is not therefore required. If I were to allow either appeal, then as the Competent Authority, I would need to consider this matter further and undertake an Appropriate Assessment if necessary.

Planning Balance and Conclusions

68. I have found that the proposals to retain Orchard Cottage would not conserve or enhance the SHNL, in conflict with the relevant policies of the development plan, to which I am required to attach great weight. The proposals would not be inappropriate development in the Green Belt, as any harm to openness would fall short of the substantial level under the exception for PDL in paragraph 154 g) of the Framework, and therefore they would accord with the relevant policies of the development plan for Green Belt.
69. The Council cannot demonstrate a five-year supply of deliverable housing sites. However, in accordance with footnote 7, the policies of the Framework regarding National Landscapes, which have the highest level of protection in relation to these issues, indicate a strong reason to refuse the proposals. Therefore, the proposals do not benefit from the presumption in favour of sustainable development.
70. For the reasons above, I therefore conclude that the appeals should be dismissed. Furthermore, for Appeal A, the condition remains reasonable and necessary in the interests of the character and appearance of the area, including the conservation and enhancement of the SHNL and AGLV, and therefore the application should be refused.

J Moore

INSPECTOR