



Appeal Decision

Site visit made on 12 March 2025

by **A Price BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 April 2025

Appeal Ref: APP/C3620/W/24/3349122

Whealers Lane Nurseries, Brockham, Surrey RH3 7HJ

- 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 Mr John Gray against the decision of Mole Valley District Council.
 - The application Ref is MO/2023/1970/PLA.
 - The development proposed is described on the application form as the 'erection of dwelling and carport.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework was updated in December 2024. The main parties were given the opportunity to comment on the updated version. These comments have been taken into consideration.
3. A new Local Plan was adopted on 15 October 2024, after the appeal was made, and this supersedes the previous plan. The Council has outlined to me which policies of the new plan are the most relevant. I refer to these below.

Main Issues

4. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and relevant development plan policies; and
 - the effect of the proposed development on biodiversity and protected species.

Reasons

Whether inappropriate development

5. The National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt. Policy EN1 of the Mole Valley Local Plan (2020-2039) broadly conforms to the general thrust of national Green Belt policy, setting out that land which is designated as Green Belt will be protected against inappropriate development, as defined by national policy. The Framework, however, sets out certain exceptions. One of those, at paragraph 155, relates to grey belt land.

6. Paragraph 155 sets out that the development of homes in the Green Belt should not be regarded as inappropriate where a) it would utilise grey belt land and would not fundamentally undermine the purposes of the remaining Green Belt; b) there is a demonstrable unmet need for the type of development proposed; c) the development would be in a sustainable location; and d) where applicable, the development meets the 'Golden Rules' requirements set out in Framework paragraphs 156-157. I consider these in turn, below.

Utilising grey belt land (a)

7. The Framework defines 'grey belt' as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. Grey belt excludes land where the application of the policies relating to the areas or assets in footnote 7 would provide a strong reason for refusing or restricting the development.
8. Based on the evidence submitted and my observations on site, I am of the view that the appeal site could reasonably be described as grey belt land. There is no dispute that the site comprises previously developed land and I have no reason to disagree.
9. The appeal site is positioned in a part of the village of Brockham where it begins to transition from a village character to a more rural character. Although the site is enclosed by established built form on four sides, its location could not reasonably be described as a large built-up area. Brockham is a rural village (not town) located a reasonable distance from any nearby settlements. The site does not form part of a gap between towns or part of the setting of an historic town. From that perspective, the proposed development would not result in the merging of neighbouring towns and would not harm the setting and special character of historic towns.
10. There is no evidence before me that would lead me to conclude that the site should be excluded from the definition of grey belt because of the application of footnote 7. The site is previously developed land and, based on the reasons given above, does not strongly contribute to the purposes of (a), (b) or (d) of paragraph 143. The proposed development would not fundamentally undermine the purposes of the Green Belt across the area of the plan. The proposed development would meet the requirements of paragraph 155(a).

Demonstrable unmet need (b)

11. The Council, in its officer report, set out that its latest Housing Delivery Test results are below the 75% threshold (70%). In addition, it set out that it could only demonstrate a housing land supply of 2.9 years.
12. The appellant has acknowledged that, since that time, the Council can demonstrate a 5 year supply of housing land. However, its housing delivery results remain under 75% for the past three years. The Council has provided no evidence to the contrary. Overall, based on the evidence before me, it would be reasonable to conclude that there is a demonstrable unmet need for the type of development proposed (housing). Accordingly, the proposed development would meet the requirements of paragraph 155(b).

Sustainable location (c)

13. The appeal site is positioned towards the south-eastern edge of the rural village of Brockham. Brockham contains some limited day-to-day services such as a convenience shop and public house. It also contains a bus service.
14. The proposed development is for a single dwelling between established dwellings. The introduction of a further dwelling in this location would undoubtedly result in the use of private cars to access local services and facilities, mindful of the Framework's caveat that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nevertheless, this would be a small increase relative to the present use of the road. Moreover, the village facilities and bus stop are within a reasonable walking and cycling distance of the site. Overall, the proposed development would meet the requirements of paragraph 155(c).

Golden Rules (d)

15. As the proposed development does not meet the definition of major development, (d) is not applicable in this instance.
16. I note the Council's concerns with regard to openness. However, none of the criteria relating to grey belt land is concerned with openness. Therefore, this is not a consideration in determining whether the proposed development is inappropriate development or not.

Conclusion

17. Overall, I conclude that the proposed development would utilise grey belt land and would not fundamentally undermine the purposes of the remaining Green Belt in the plan area. Consequently, I find that the proposed development satisfies an exception and would not be inappropriate development in the Green Belt. I discuss the other main issue below.

Biodiversity and protected species

18. The Council's second reason for refusal relates to insufficient information having been submitted to demonstrate that the proposed development would not adversely affect protected species and habitats.
19. A Preliminary Ecological Appraisal (PEA) and Preliminary Roost Assessment (PRA) was submitted in support of the proposed development. This presents an evaluation of the ecological value of the site, which includes the likely risk to amphibians and reptiles, roosting bats, foraging and commuting bats, badgers, dormice, hedgehogs, otters and water vole, birds and invertebrates.
20. There is no dispute between the appellant and Council in respect of badgers, dormice, hedgehogs, otters and water vole, birds or invertebrates. Based on the evidence before me, I have no reason to disagree with those findings. However, matters raised within the submitted evidence relate to the impact of the proposed development on reptiles, Great Crested Newts and bats. I deal with these in turn below.

Reptiles

21. Notwithstanding the Great Crested Newt mitigation measures discussed below, both the PEA and Surrey Wildlife Trust (SWT) consultation response refer specifically to 'common' reptiles.
22. The submitted PEA states that the 'site offers suitable habitat for common amphibians and reptiles due to the presence of grass, hedgerow and tree lines on the site. These features could provide opportunities for amphibians and reptiles to forage, commute and shelter.' The PEA further states that 'site clearance could result in the death or injury of amphibians and reptiles, if present.' A possibility of the presence of reptiles has therefore been identified.
23. The SWT set out (at page 4 of their consultation response) that without appropriate survey data in respect of reptiles, the applicant cannot know what mitigation is appropriate to ensure that it would be effective or appropriate. There is no substantive evidence before me that leads me to an alternative conclusion on those findings.
24. Without clarification, it is not possible for me to satisfactorily conclude that the proposed development would have an acceptable effect on protected species (namely reptiles) or that it could subsequently meet the requirements of planning policies in this respect. Moreover, the Planning Practice Guidance indicates that where a development is likely to lead to harm to individual reptiles or their habitats, surveys should be carried out and planning conditions that ask for surveys should not usually be attached. There is insufficient evidence before me, such as a survey, in relation to reptiles.

Great Crested Newts

25. The PEA concludes that the proposed development would have a very low potential for impacts to Great Crested Newts (GCNs). However, the SWT, in their consultation response, consider the site to have a reasonable likelihood of GCNs being present. They set out the appellant's requirement to either submit further ecological justification for the proposed approach for GCNs or evaluate the potential for a GCN district licence to be used for the project. These were sought prior to determination.
26. A draft GCN District Licencing Scheme Certificate has since been obtained and submitted in support of the appeal. This confirms that the proposed development has been evaluated by NatureSpace and can be covered under the District Licence. A consultation response from NatureSpace confirms that this is sufficient evidence to satisfy the requirement for adequate mitigation and compensation for GCNs. A number of planning conditions are recommended in connection with the licence, which would be included if the appeal was allowed and planning permission granted. This matter is not disputed by the Council. I have no reason to disagree with the evidence. I am therefore satisfied in respect of the proposed development's effect on GCNs.

Bats

27. Concerns relating to the potential effect on bats has been raised by the Council. The submitted PEA concluded that the tree lines and hedgerow could be used by

local bat populations for foraging and commuting but that the proposed development would not result in any loss to these areas.

28. SWT has set out that the PEA/PRA was appropriate in scope and methodology in respect of bats. They advised that, based on this, there is a likely absence of active bat roosts at the site. However, it noted that the trees to the south of the site may be suitable for bats and that these did not appear to be the subject of the bat roost potential evaluation. Consequently, SWT recommended a tree protection plan and bat roost assessment should be submitted if (my emphasis) boundary trees are to be impacted by the proposed development. It was advised that this was undertaken prior to determination.
29. No such details are before me. However, the appellant has not indicated that trees are scheduled to be removed. Rather, the submitted Design and Access Statement confirms, at paragraph 2.7, that no trees are to be removed from the site to facilitate the proposed development and those within close proximity of the site will be protected. Moreover, the submitted drawing ref 23/028/102 C indicates in its key a symbol for 'existing trees to be removed'. This symbol is not used in the block plan illustrated on that drawing. Furthermore, the appellant has since confirmed that no trees are proposed to be removed from the site. I have assessed the proposed development on that basis and am satisfied in respect of the effect of the proposed development on bats.
30. Overall, while I have found some matters acceptable, there is insufficient evidence before me to demonstrate that the proposal would have an acceptable effect on biodiversity, in particular the protected species of reptiles, contrary to the relevant provisions of policy EN9 of the Mole Valley Local Plan (2020-2039). This policy, in summary, seeks to ensure that development proposals avoid negative impacts on biodiversity and protected species.

Other Matters

31. The appeal site lies near to a Grade II listed building, Tumbledown Farmhouse. Accordingly, I have had special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it may possess, as required under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). There is no dispute between the appellant and Council in respect of heritage matters, and I have no reason to disagree. Accordingly, the proposed development would not harm the significance of these designated heritage assets.

Conclusion

32. For the reasons above and having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

A Price

INSPECTOR