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## Appeal Decision

Hearing held on 19 March 2014

Site visit made on 19 March 2014

**by R P E Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 29 April 2014**

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**Appeal Ref: APP/C3620/A/13/2209912**

**The Bungalow, Kiln Lane, Brockham, Betchworth, Surrey RH3 7LZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Paul Hunt Investments Ltd against the decision of Mole Valley District Council.
  - The application Ref MO/2013/0806/OUTMAJ, dated 12 June 2013, was refused by notice dated 16 September 2013.
  - The development proposed was first described on the application as: 'The proposal seeks access for 34 dwellings, of which 15 will be for affordable purposes, and associated parking'.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council used a different description that had not been agreed with the Applicant. At the hearing it was agreed by the main parties that the application is for outline permission to erect 34 dwellings (of which 15 would be affordable) with all matters other than the dwelling numbers and access reserved for subsequent determination. Neither the number nor the location of the parking spaces is part of the outline application. The appeal has therefore been determined on the basis of the following agreed description: *'The erection of 34 dwellings, including 15 affordable dwellings, with all other matters except access reserved for subsequent determination.'*
3. The property known as 'The Bungalow' is not within the application site but stands on other land owned or controlled by the Appellant and edged blue on the submitted drawings. The red line defining the application site includes another bungalow known as 'Rosemarie' fronting Mill Hill Lane and also a commercial building currently used for a pet supplies business and other business activities. However the Appellant states that it is not intended to redevelop either of those premises. Moreover the application form confirmed that there would be no change in non-residential floorspace on the site. The Appellant states that it was an error on the form not to record the Rosemarie bungalow as an existing dwelling to be retained. The Council has confirmed that it determined the application on the basis that these existing buildings would be retained.

4. The outline application includes a new vehicular and pedestrian access to Kiln Lane and a new pedestrian/cycle access at the south east corner of the site. The only drawing showing the access arrangements is described as an 'Indicative Site Plan'. However the Council and Appellant agree that the access arrangements shown there are not indicative and that this could be confirmed by a planning condition. The pedestrian crossing shown on that drawing is not part of the planning application and its provision would be subject to a separate agreement with the highway authority.

### **Main Issues**

5. The Council acknowledges that it currently lacks a 5-year supply of housing land. The development would add to the supply of such land. However the development would be within the Metropolitan Green Belt and is acknowledged by the Council and the Appellant as inappropriate development that is by definition harmful to the Green Belt. The appeal site is part of one of many alternative candidate sites currently being considered by the Council for allocation for housing development in an emerging plan and subject to review of the Green Belt boundary.
6. The main issues are considered to be:
  - whether there is other harm to the purposes of the Green Belt and its openness;
  - what effect the development would have on the character and appearance of the area;
  - whether safe access can be assured;
  - whether adequate provision is made in the submitted S106 agreement for (i) affordable housing and for (ii) infrastructure to support the development; and
  - having regard also to the emerging statutory plan, whether to address unmet housing need would outweigh the harm to the Green Belt (and any other harm) such as to qualify as very special circumstances which justify allowing the development.

### **Background and Policy Context**

7. The appeal is to be determined in accordance with the adopted development plan unless material considerations indicate otherwise. The development plan currently comprises the Mole Valley Core Strategy (2009)(the CS) and saved policies of the Mole Valley Local Plan (2000)(the LP). CS Policy CS1 provides that new development will be directed towards previously developed land in the District's main settlements. It also allows for limited development within larger villages such as Brockham. However the appeal site lies outside but adjacent to the settlement boundary and within the Green Belt, both as defined in the development plan. Nevertheless CS1 also provides that the Council will review the existing Green Belt boundary through a Land Allocations Development Plan Document (the emerging plan) to ensure that there is sufficient land to meet development requirements throughout the Plan period.
8. The Council has since embarked on just such a review of the Green Belt and has recently carried out public consultation on sites that have been suggested

by landowners and developers as suitable for allocation for housing. These sites include the appeal site but combined with the adjoining land edged blue. The Council anticipates publishing a plan with selected sites later in 2014 for formal consultation with a view to the submission, examination and adoption of that plan as part of the statutory development plan in 2015.

9. There have been 2 previous planning applications for housing development of the larger combined site. Both were refused by the Council and one of these was dismissed at appeal in 2013 (Appeal Ref: APP/C3620/A/12/2188330) (the previous appeal). The Inspector then concluded that the development would be inappropriate in the Green Belt and would cause substantial harm to the openness of the Green Belt and to one of its purposes which is to prevent encroachment on the countryside. He also concluded that there would be harm to the area's character and appearance contrary to CS Policy CS13. This harm was not outweighed by other considerations that included the contribution which would be made to addressing housing need (including the need for affordable housing).
10. The National Planning Policy Framework 2012 (the Framework) is a material consideration and it includes relevant policy on the Green Belt and housing supply. The Government has also recently published new Planning Practice Guidance which expands on policies in the Framework and replaces much previous guidance.

## **Reasons**

### *Green Belt*

11. Paragraph 80 of the Framework defines 5 purposes served by the Green Belt. Whilst the site area has been reduced compared to the previous appeal, the appeal site remains outside the settlement boundary and thus within the countryside. It therefore continues to represent an encroachment into the countryside with associated harm to 1 of the 5 purposes.
12. The scale, form and layout of the housing would be reserved for subsequent determination. However the likely scale and disposition of the dwellings is indicated in the submitted drawings. These are 2 storey houses and flats of relatively modest scale. However even if the buildings are kept to minimum proportions they would inevitably have a significant adverse effect on the openness which the Framework at paragraph 79 describes as an essential characteristic of Green Belts. That is here exacerbated in that the development would be on rising ground and exposed to close views from roads, footpaths and bridleways on 3 sides. Views of the fourth side would also be available across the blue land. The encroachment and loss of openness would also be apparent in some more distant views.
13. It is concluded that so long as the land is within the Green Belt, there would be harm to the Green Belt by reason of inappropriateness, encroachment into the countryside and loss of openness. Paragraph 88 of the Framework provides that substantial weight should be given to any harm to the Green Belt and that very special circumstances to justify approving development in the Green Belt will not exist unless the harm is clearly outweighed by other considerations.

### *Character and Appearance*

14. CS Policy CS13 provides amongst other things that all new development must respect and, where appropriate, enhance the character and distinctiveness of the landscape character area (LCA) in which it is proposed. The site lies within the Holmesdale LCA as described in the Landscape Supplementary Planning Document (SPD). Amongst the relevant key characteristics of this area are that it is a gently undulating landscape with far reaching expansive views of the North Downs and it includes a series of attractive village settlements, pockets of woodland, and recreational access via tracks and driveways including a section of the Greensand Way long distance path.
15. The site is an open grassed field on rising land. Together with the large sports fields to the north of Kiln Lane, it is part of an open break between the groups of built development that make up the attractive village of Brockham. It contributes to the generally spacious character of the settlement. The land was previously used as a smallholding and later for other agricultural purposes. There are low chainlink fences to some boundaries. Leylandii hedging has recently been planted along lengths of the eastern and southern boundaries. The fencing is utilitarian and the non native hedge planting is out of character with this rural location. The pet supplies building is also utilitarian and unattractive but is proposed for retention in any event. However recent planning decisions relating to its use are likely to result in the removal of unauthorised outbuildings and hardstandings on that site which should improve its appearance and reduce intrusion in the Green Belt.
16. The appeal site is not otherwise unattractive and it is typical of many such fields in the surrounding countryside. Its sloping form adds to its visual interest. There are views across the land which include views to mature trees beyond the southern and eastern boundaries and north of Kiln Lane. There are also long views across the site from adjacent footpaths and bridleways towards the high ground of the North Downs Area of Outstanding Natural Beauty. However these latter views would be lost should the recently planted hedge be allowed to reach maturity.
17. In reverse views from Box Hill and from some public rights of way in the AONB the site is visible as a small open area within a broad and extensive landscape of mixed urban and rural settlements and countryside including significant numbers of trees. The Inspector for the previous appeal commented that the site performs an '*important role*' as a finger of undeveloped land linking the undeveloped land south of the river with the large [National Trust] sports fields, and AONB to the north. However he went on to say that the view from Box Hill and the escarpment (within the AONB) would be distant and that the development of the appeal site would likely pass unremarked amongst the wide ranging sweep of predominantly rural land (which, as he said, also takes in much built form). To my mind those considerations undermine his previous conclusion that the site performs an important role, at least in these long views where few people would notice the change.
18. In near views from adjoining rights of way the proposed development would inevitably alter the character and appearance of the site from an open rural field to an essentially suburban form of development. The indicative site layout includes flats and semi-detached or terraced houses in a conventional estate layout. Whilst parts of Brockham and especially its conservation area have a

strongly rural village character, other parts including Nutwood also have a more suburban character resulting from 20<sup>th</sup> century estate development. The Council has not claimed that the development would fail to preserve the character or appearance of the adjacent conservation area to the south or its setting and I agree that there would not be a material impact.

19. There would be a loss of open views across the site including some views from footpaths towards the North Downs that were acknowledged as 'striking views' in the Council's Larger Rural Villages Character Appraisal SPD (paragraph 5.20). In particular there would be a loss of a view northward from a short stretch of the Greensand Way long distance path close to the south east corner of the site. That would still apply even if the effect were mitigated by keeping open the corner of the site as suggested by the Indicative Site Plan. There would also be a loss of open views west from the Mill Hill Lane bridleway. These effects would be essentially the same as for the previous appeal scheme.
20. Compared to that previous appeal proposal there should be a reduced effect on views south from Kiln Lane in that the land edged blue would not be built upon. That is the highest and most prominent part of the site. In relation to views northwards from the footpath that adjoins the site's southern boundary, views from the east section of that path are already limited to a degree by the land levels and the path has a more enclosed woodland character. However where dwellings and their enclosures could be seen they would be on higher ground above the path which would increase their visual impact. The western section of the path does benefit from more open views northwards across the land edged blue. Unlike the previous appeal scheme these views would not be obstructed by housing. However the recent hedge planting beside this section of path and also beside Mill Hill Lane means that open and rural views may be lost whether or not the appeal scheme proceeds.
21. There was some discussion at the hearing as to whether the visual impact could be mitigated by landscaping or by design of the houses. Certainly there would be some scope for landscape buffer planting to the site boundaries and especially along the western edge, although this would need to be more substantial than has been indicated on the indicative layout drawing. The use of suitable native hedge and tree species would help to respect the area's character and should soften, but would not screen, the appearance of the buildings. Ensuring that the dwellings were of modest height and scale would also provide some mitigation and help to integrate the development into its surroundings, although the buildings would remain visible. Whilst some earthworks would be needed to create level sites for each dwelling, there is only very limited scope to reduce the visual impact of the buildings by reducing ground levels.
22. Without a detailed design it cannot be reliably concluded how well the landscape character would be respected by the design and layout of the development. But the overall conclusion on this issue is that after mitigation the development would probably still result in a loss of open and rural character and views. That would conflict with an objective of Policy CS13. However it is an almost inevitable consequence of developing any greenfield site on the edge of a rural settlement and is thus also likely to be true of other sites that the Council is considering for release from the Green Belt. In the fallback situation if the site is not developed then the long views could still be

lost as the result of planting that has already taken place. Such planting does not normally require planning permission.

23. It is beyond the scope of the appeal process to assess whether the effect on character and appearance of developing this site would be more or less than that of developing any other candidate site. For many of the candidate sites including this one there is likely to be a tension between the need for housing and landscape protection. That is a matter that can only be addressed by the emerging allocations plan. In the meantime it can be concluded that development on the appeal site would result in some landscape harm which would need to be weighed with the benefits of providing housing.

#### *Access*

24. The Council refused permission in part because there had been no submitted planning obligation under Section 106 of the Act to secure safe visibility at the access and a pedestrian crossing of Kiln Lane. The Appellant has subsequently signed a S106 agreement with the Council. It does not cover those matters but the main parties agree that they can be suitably addressed instead by planning conditions.
25. Whilst some interested persons have suggested that Kiln Lane is not a safe road and that, by implication, use of the proposed new access to Kiln Lane would not be safe, neither the Council nor the highway authority has any objection. There has been anecdotal reference to road accidents on Kiln Lane with unexplained causes many years ago. Reference has also been made to more recent obstructive parking on occasions by delivery lorries. However neither circumstance adequately substantiates claims that the road is unsafe or that the proposed development would make matters materially worse.
26. It is concluded on the submitted evidence that the development would accord with relevant development plan policies in this regard including LP Policy MOV2.

#### *Affordable Housing*

27. It has not been disputed that property values in this area are high or that there is an unmet need for more affordable housing. The 2009 housing needs survey was carried out by a reputable organisation with Council support and it identified 29 households in Brockham in need of affordable housing. Even if that overstated the local need in this settlement then it remains likely to be significantly more than the 15 affordable dwellings that would be provided here. That would accord with Council policy which seeks 40% provision based on identified needs across the District. There is some local support for the proposed development, mainly on the grounds that it would include these affordable dwellings. The S106 agreement that has been completed since the Council refused planning permission would secure their provision. The agreement provides that 11 of the dwellings would be for rent with the remainder for shared ownership. They would be allocated according to a nominations agreement that would be reached between the Council and a social housing provider. That is envisaged to provide that the first letting of the rented dwellings would be to persons who live in Brockham or have a suitable local connection.
28. It is acknowledged that the S106 agreement falls short of the aspirations of some local people that all affordable housing occupiers in perpetuity would be

local people. However there would be provision for changes to the nomination agreements should circumstances change. In any event the affordable housing provision would be secured and it would be a significant benefit.

### *Infrastructure*

29. The S106 agreement includes provision for a payment of about £237,500 for provision of infrastructure to include payments for primary and secondary education facilities, IT equipment for Dorking Library, equipped play space, recycling, environmental improvements and off-site transport improvements. All the payments are said to accord with the District Council's Code of Practice for contributions. There are also submitted statements by the County Council which suitably support the need for the library and education payments. They have been taken into account. Whilst interested persons suggest that provision for education may not be adequate, that depends upon complex considerations of catchments, travel distances and school planning and there is inadequate information to outweigh the conclusions of the County Education Authority which does not object. These provisions would appear to comply with CS Policy CS17.
30. In respect of the other payments that were included in the calculation of the contribution, there is no supporting statement and consequently limited evidence before me to identify how they would be used or to support the need, relevance, fairness and reasonableness of those payments. For example, whereas the S106 figure includes over £11,000 for environmental improvements, the only environmental improvement scheme in the Code of Practice for Brockham is the management of verges on Brockham Green which is costed at an estimated £5,000. There is no information before me as to the transport works. It is thus not clear whether these payments satisfy the policy tests for planning obligations as set out at paragraph 204 of the Framework. These other amounts have therefore not been taken into account in this decision.
31. There is no provision in the S106 agreement for enhanced medical services. However, whilst there is some anecdotal evidence that it is currently difficult to get an appointment at the local doctor's surgery, that falls short of the evidence needed to justify dismissal of the appeal on the grounds of a lack of infrastructure.

### *Housing Need*

32. The identified harm to the Green Belt and some identified harm to the character and appearance of the area needs to be weighed with the benefits of the development.
33. It is in the public interest that there should be sufficient housing for the population both locally and nationally. There has been a widely reported shortage of housing, both nationally and particularly in the South East. Any housing development would be of benefit to those who would occupy the housing. In each local area the Framework at paragraph 47 requires that local planning authorities identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition, or a higher 20% buffer where there has been a record of persistent under-delivery. In this

case, and in the absence of any other objective assessment of the local need for market and affordable housing as required by paragraph 47 of the Framework, the CS defines the housing requirement as that based on the former South East Plan requirement for the District. In defining housing requirements for each district the South East Plan already made allowance for development constraints such as the Green Belt. Thus the housing requirement for the District was not necessarily the same as the assessed need to serve the population of that area. The need may actually be greater. The CS housing requirement is more modest than that for many other districts in the South East beyond the Green Belt. On the basis of the CS requirement the Council accepts that the District has only about 4.5 years supply. That represents a shortfall of at least 80 dwellings. Were the Framework buffer rules applied then this shortfall could be higher. The development of an additional 34 dwellings that could be delivered within 5 years would significantly reduce that shortfall. That this includes 15 dwellings would also make significant provision to meet affordable housing needs in accordance with CS Policy CS4.

34. Where a 5 year supply is lacking, paragraph 49 of the Framework provides that relevant local policies for the supply of housing should not be considered up-to-date. The paragraph also provides that housing applications should then be considered in the context of the Framework presumption in favour of sustainable development. In that context paragraph 14 provides amongst other things that where relevant policies are out of date then planning permission should be granted unless any adverse impacts of doing so: *'would significantly and demonstrably outweigh the benefits'*.
35. In relation to the harm to the Green Belt it is highly material that the Government's recently published Planning Practice Guidance provides in the section entitled *'Housing and Economic Land Availability Assessment'* that: *'Unmet housing need ... is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development in the Green Belt'*. That indicates that harm to the Green Belt and other harm is considered by the Government to be likely to significantly and demonstrably outweigh the benefits of addressing the unmet housing need.
36. It does not follow that the Council may disregard the provisions of the Framework to address housing needs. Indeed the current review of the Green Belt and preparation of an allocations plan is a means to that end. However an allocation of the appeal site or any other site for housing that is currently in the Green Belt would only be made on the basis that the site is removed from the Green Belt. Its development would then not contravene Green Belt policy.
37. Whether or not the appeal site is more or less suitable for housing development than any other candidate site for allocation, whether in Brockham or elsewhere, is not a matter for me to determine.
38. Referring to earlier Government guidance, the Inspector for the previous appeal commented that this is not a case where the decision should be delayed on the grounds of prematurity because the subject appeal was not a *'substantial development'*. The prematurity test has since been modified in the recently published Planning Practice Guidance in the section on *'Determining a Planning Application'*.



39. It remains the case that the development is not 'substantial', particularly as the number of proposed dwellings has been reduced. However there could be a cumulative effect in that to allow the appeal would invite further applications in advance of the publication of the allocations plan for the development of other candidate allocation sites on the basis of addressing unmet housing needs. There is thus potential for multiple applications to cumulatively undermine the plan-making process. Moreover earlier advice that a proposal that only has an impact on a small area would rarely come into this category does not appear in the new guidance.
40. The guidance also requires that the emerging plan be at an advanced stage but not yet formally part of the adopted plan. In particular, for a draft Local Plan the refusal of an application on the basis of prematurity to that plan would seldom be justified unless the draft plan has been submitted for examination. In that regard the emerging allocations plan is not yet at an advanced stage and has not been submitted. However the guidance does allow that prematurity may justify a refusal of planning permission where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking all the policies of the Framework and any other material considerations into account. In that regard I have concluded above that those circumstances do apply here in relation to the harm to the Green Belt. There is also the potential for additional cumulative harm from similar proposals for development in the Green Belt. I conclude that prematurity to the emerging allocations plan is another adverse impact of the proposal.
41. The Appellant has pointed to another example of a site where the Council has granted planning permission for housing in the Green Belt at Beare Green. That was also in advance of the publication or adoption of the allocations plan. However that decision predated the Planning Practice Guidance which is a material consideration. Participants at the hearing also pointed to a number of differences in site characteristics at the Beare Green site including that it is less prominent and that it already contained many more buildings which would be replaced. It follows that there would be a lesser impact on Green Belt openness. In any case the current appeal falls to be determined on its own merits.

### **Other Matters**

42. A number of other matters have been raised in representations by interested persons and they have been taken into account. In particular it is acknowledged that some existing dwellings to the east of the site in Nutwood are located at a lower level. I visited two of these dwellings and saw that from there the proposed dwellings on the appeal site would appear above the ridge against the sky. There could also be some loss of direct late afternoon or evening sunlight at those neighbouring properties. However there is no right to maintain unchanged a view from private property and I agree with the Council that the separation distance would be adequate to avoid any unacceptable harm to living conditions at those properties or at any other dwelling near the appeal site by reason of loss of light or any overbearing effect on outlook .
43. Part of the appeal site appears on some Environment Agency maps as within fluvial flood zone 2. However that happens to be the highest part of the site.

The Agency has confirmed that their map is in error such that none of the site is within the flood zone. In relation to surface water run off, it is reported that water can run off the present site onto adjoining land and Kiln Lane in periods of high rainfall. However surface water drainage can be designed into a development to manage such run off and at least to prevent any increase. There is insufficient information before me to conclude that it would be impossible to design a scheme which both allowed for the development to take place and which avoided any increase in existing run-off. A well designed scheme with good surface water attenuation could even potentially improve upon the existing situation in which case it would qualify as a benefit rather than the present harm.

44. Neither these nor any other matters raised outweigh my conclusions on the main issues.

**Conclusion**

45. For the above reasons it is concluded that there would be substantial harm to the Green Belt as defined in the LP and conflict with national policy in that regard. There would also be some likely harm to the character and appearance of the area contrary to an objective of CS Policy CS13. To allow the appeal would also have the potential to cumulatively undermine the emerging allocations plan by encouraging further applications for the development of Green Belt land in advance of the outcome of the review of Green Belt boundaries and the allocation of housing sites. These harms would together significantly and demonstrably outweigh the benefits of early provision of housing to address the needs identified in the CS for market and affordable housing. Consequently there are no very special circumstances to justify the development. The appeal should therefore be dismissed.

*R P E Mellor*  
INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

A McNaughton BSc PGDip	Director, Rymack Ltd - Architecture, Planning and Development
R Gamble	Director, Rymack Ltd
C Wilmhurst	Planning Consultant, Vail Williams
P Hunt	The Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

J Blackwell BA DipTP MRTPI	Planning Consultant, Cunnane Town Planning
Ms J Smith MA MA MRTPI	Senior Planning Policy Officer, Mole Valley District Council
Ms S Nelson BSc MA MRTPI	Principal Planning Policy Officer, Mole Valley District Council

### INTERESTED PARTY:

M Homewood	Vice Chair of Brockham Parish Council
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### INTERESTED PERSONS:

Cllr P Potter	Ward Member for Brockham, Betchworth and Buckland, Mole Valley District Council
Cllr V Homewood	Ward Member for Beare Green, Mole Valley District Council
R Abbott	Local Resident and Chair of Nutwood Action Group
Ms E Bailey	Local Resident
M O'Brien	Local Resident
R Rode BSc MA	Brockham Resident
Ms D Mayall	Brockham Resident

## DOCUMENTS SUBMITTED AT THE HEARING

- 1 2<sup>nd</sup> letter of notification and list of persons notified (MVDC)
- 2 List of persons represented at hearing by Mr Abbott (Abbott)
- 3 Letter from Technics Group concerning site levels (Abbott)
- 4 Copy of Mr Abbott's Appeal Stage representations (Abbott)
- 5 Fox Land & Property Ltd V SoSCLG and Castle Point BC [2014] EWHC 15 [Admin] (Abbott)
- 6 Bundle of papers concerning recent application for retrospective planning permission for the change of use of building now occupied by Brockham Pet Shop (MVDC)
- 7 Code of Practice for Planning Infrastructure Contributions (MVDC)