



Appeal Decision

Site visit made on 1 March 2022

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st April 2022

Appeal Ref: APP/K3605/W/21/3276823

Apps Court Farm, Hurst Road, Walton-on-Thames KT12 2EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Apps Court Farm against Elmbridge Borough Council.
 - The application Ref 2020/2773 is dated 3 November 2020.
 - The development proposed is described as 'development comprising 39 no. residential units (including 15 no. affordable units)'.
-

Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. Outline planning permission is sought with details of access and layout to be considered at this point, and with details of appearance, landscaping and scale reserved for future consideration. I have therefore taken the site layout plan¹ into account insofar as it relates to access and layout matters, but otherwise treated it and all other drawings as illustrative.
3. The National Planning Policy Framework (Framework) was revised on 20 July 2021. It replaces the version from 2019, which was in effect prior to the appeal being lodged. The appellant and the Council have been able to comment on the current version of the Framework during the appeal process.
4. On 14 January 2022 the latest Housing Delivery Test results were published. These indicate that the presumption in favour of sustainable development, as set out at paragraph 11(d) of the Framework, is applicable. The presumption also applied when the appellant and the Council made their appeal submissions because of the test results from 19 January 2021. In any case, the Council has confirmed that the presumption applies as it can only demonstrate 3.96 years supply of deliverable housing sites. As such, it has not been necessary to seek further views from the parties regarding the latest test results.
5. The Council has stated the position it would have taken on the application if it had made a decision. The main issues identified below have been informed by the Council's appeal statement.
6. In an attempt to address comments from the Highway Authority made during the application process, a drawing² has been provided with the appeal as part of an updated transport statement. The Council and interested parties have

¹ Drawing reference: 2019/P0069 01

² Drawing ref: 19.91-002 Rev A

been able to consider this evidence during the appeal process. I have therefore taken it into account.

Main Issues

7. The main issues are:

- whether or not the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- the effect of the proposal on the purposes of including land within the Green Belt;
- the effect of the proposal on the character and appearance of the site and the surrounding area;
- whether or not the proposal would be satisfactory in respect of housing mix and density and make adequate provision for affordable housing;
- whether or not the future occupiers of the development would have satisfactory living conditions having regard to air quality, noise and light pollution;
- the effect of the proposal on biodiversity;
- whether or not the proposal would be satisfactory in respect of flood risk and make adequate provision for sustainable drainage; and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate development

8. The site principally includes a large area of hardsurfacing near to and served by a gated access off Hurst Road. Many vehicles of various sizes were located on site when I visited. Trees and hedges extend across the front of the site adjacent to Hurst Road. The site is next to an open field that has camping equipment and associated vehicles located on parts of it. The field also features equipment that appears to form a dog agility course. An open space is located between one of the site's side boundaries and housing along Dillmount Drive. The principal access to Apps Court Farm and a few buildings are located on the other side of the site. An embankment is located on the opposite side of Hurst Road. It is common ground that the site is within the Green Belt.
9. Paragraph 147 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should only be approved in very special circumstances. Exceptions to inappropriate development are specified at paragraphs 149 and 150 of the Framework.
10. Elmbridge Core Strategy (CS) Policy CS1 sets out the spatial strategy for the borough. It says that the Green Belt, alongside other open spaces, will continue to be a key determinant in shaping settlements and development patterns and the role of the green infrastructure network will be protected and enhanced. CS

Policy CS2 identifies the Council's approach to the provision, location and distribution of housing with reference to delivery forecasts for individual settlements. CS Policy CS3 states that development outside the Walton-on-Thames Town Centre will be promoted through redeveloping previously developed land in a way that integrates with and enhances local character. In addition, Policy DM17 of the Elmbridge Local Plan Development Management Plan (DMP) states that inappropriate development will not be approved unless very special circumstances can be demonstrated.

11. The appellant considers that the proposal would be inappropriate development. However, the Council states that it would be located on previously developed land and thus the exception at paragraph 149(g) of the Framework should be considered. It relates to limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development, or which would not cause substantial harm to the openness of the Green Belt, where the development would reuse previously developed land and contribute to meeting an identified affordable housing need within the area. An assessment of the effect of the proposal on the openness of the Green Belt is therefore required.
12. The proposed residential properties would be situated around a no through road that would extend across most of the site and be roughly parallel with Hurst Road. Whilst details of scale are reserved, the volume of the 39 proposed dwellings would be considerable. The garages shown on the site layout plan would increase the total volume of buildings on site further. In contrast, the existing hardsurfacing is flat and at ground level, and thus has no volume. Additionally, although the hardsurfacing would be removed, this would be replaced in part by carriageway, footways and driveways. As such, the proposal would have a substantial impact on the openness of the Green Belt spatially.
13. The proposed dwellings would be located near to Hurst Road. Many would be visible from the access and through and above the vegetation to the front of the site. The development would also be visible from the open space near Dillmount Drive, despite some intervening vegetation, and from near the principal access to Apps Court Farm. Therefore, the proposal would also have a substantial impact on openness visually.
14. The provision of open space within the site would not overcome the impacts identified. Further landscaping at the site's boundaries would not be able to screen the development to the extent that it would not be harmful. Although lots of vehicles were parked across the site when I visited and there was space for further vehicles, the impacts of vehicles being parked or stored on the site are not comparable with the impacts of the permanent physical building work proposed. Moreover, a significant number of vehicles would likely be parked on the site by the occupiers of the proposed dwellings.
15. The proposal would have a greater impact on the openness of the Green Belt than the existing development. Furthermore, the development would result in substantial harm to the openness of the Green Belt. Accordingly, the proposal falls outside the exception at paragraph 149(g) of the Framework and would be inappropriate development in the Green Belt.

Purposes of the Green Belt

16. Paragraph 138 of the Framework states that Green Belt serves 5 purposes. The Council contends that the proposal would harm the Green Belt's purposes to check the unrestricted sprawl of large built-up areas, protect neighbouring towns merging into one another, and assist in safeguarding the countryside from encroachment.
17. The Council's claims are supported by a Green Belt Review³. This identifies that the site is within a land parcel that is contiguous with the large built-up areas of Walton-on-Thames and Molesey. It sets out that the land parcel performs strongly as a check to their unrestricted sprawl. It also finds that the parcel contributes moderately to preventing the merging of the settlements, albeit there may be capacity for development without coalescence occurring. Additionally, it indicates that the parcel performs modestly in respect of assisting in safeguarding the countryside from encroachment. The appellant has not disputed the review's conclusions.
18. I note that the review was prepared primarily to support policy making. Furthermore, the housing would extend across a relatively small proportion of the land parcel. However, enclosure of the site by accesses, vegetation and buildings is currently modest. Additionally, the site and the adjacent field provide the area with an open character that is perceptible when travelling along Hurst Road. Although there is development located nearby along the road between the settlements, including water treatment facilities, the absence of buildings across the site contributes positively to the Green Belt purposes identified above. The development would appear as a series of dwellings that would infill a significant amount of open space, provide a sense of continuity of development along Hurst Road and have a suburbanising effect on the land between Walton-on-Thames and Molesey.
19. Having regard to the site's size and openness, the degree of separation between the settlements, and the presence of existing development in the vicinity, the proposal would result in moderate harm to the Green Belt's purposes to check the unrestricted sprawl of large built-up areas and protect neighbouring towns merging into one another, and limited harm to its purpose to assist in safeguarding the countryside from encroachment.

Character and appearance

20. The scale and appearance of the proposed properties could be designed to be compatible with the relatively varied character and appearance of housing in the area. Additionally, modern housing is readily apparent nearby at Dillmount Drive. However, Hurst Road and Terrace Road are characterised by properties that face towards the highway. In contrast, the proposal's layout would involve the rear elevations and gardens of many of the properties backing onto Hurst Road. As such, it would be contrary to the prevailing pattern of residential development in the area and thus appear incongruous. Furthermore, the open character of the area would be harmed, as identified above.
21. The Council contends that the parking layout would be contrived and poorly designed. It is put forward that the proposal would conflict with the Council's Design and Character Supplementary Planning Document (SPD), Parking SPD

³ Elmbridge Borough Council Green Belt Boundary Review: Issue Rev C, 14 March 2016

and the National Design Guide as a consequence. However, the parking spaces would generally be dispersed along the proposed road and near the dwellings. The parking layout would therefore be satisfactory.

22. Nevertheless, the proposal would result in moderate harm to the character and appearance of the site and the surrounding area. It conflicts with CS Policies CS3 and CS17, and DMP Policy DM2, which seek to protect and improve local character. It is also contrary to Chapter 12 of the Framework, which seeks to ensure that development is sympathetic of local character.

Housing

23. CS Policy CS17 states that to promote the best use of land and protect the borough's green spaces, the Council will promote well designed, high quality and sustainable developments which contribute to an overall housing density target of 40 dwellings per hectare (dph). It also requires a minimum density of 30 dph to be achieved but, where overriding harm to the valued character of an area would occur due to the application of the minimum density threshold, lower densities, which maximise the efficient use of land, may be acceptable in exceptional circumstances.
24. CS Policy CS19 explains that a range of housing types and sizes will be sought, reflecting the latest Strategic Housing Market Assessment (SHMA), and an over concentration of any one type of dwelling will be resisted if this is considered to have the potential to adversely affect community cohesion. Furthermore, CS Policy CS21 requires that 40 percent of the dwellings would be affordable. It also states that the target tenure mix of affordable housing should be in accordance with the most up to date SHMA or SPD. The Affordable Housing SPD sets out guidance in relation to this matter.
25. Additionally, paragraphs 124 and 125 of the Framework seek the efficient and optimal use of land, taking into account matters including identified needs for different types of housing and the availability of land suitable for accommodating it. It is also explained that where there is an existing shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities.
26. Evidence⁴ has been provided which indicates that land supply is severely limited and that there is a particular need for 1 to 3 bedroom market housing in the borough. It also indicates that the borough has significant affordability issues and an acute need for affordable housing provision, and that the greatest proportion of affordable homes should have 4 or more bedrooms.
27. Having regard to the requirements of the development plan and the objectives of the Framework, and the borough's housing needs, it is important that land is used efficiently. The Council contends that the development would have a density of 26.9 dph and a higher density could be achieved if more smaller dwellings were proposed. Firm and substantive evidence to the contrary, or which indicates that such an approach would be inefficient or result in further harm beyond that identified, has not been provided. Whilst the lower density enables larger amounts of open space and landscaping to be provided, exceptional circumstances for the proposal's density being below the minimum requirement of CS Policy CS17 have not been presented.

⁴ Assessment of Local Housing Needs, March 2020; Authority Monitoring Report 2019/20; Development Management Advice Notes 1 and 2, September 2018; Housing Delivery Test Action Plan 2020.

28. Most of the market housing and all the affordable housing would have 2 or 3 bedrooms. While such housing is needed, as confirmed by the Council's Housing Services, no 1 bedroom housing or 4 or more bedroom affordable housing is proposed. In these respects, the proposal deviates harmfully from the borough's identified housing needs.
29. Additionally, a planning obligation has not been entered into to secure the provision of the affordable housing. The appellant suggests that it is secured by a condition, but no draft wording or agreed terms have been provided.
30. The Planning Practice Guidance⁵ highlights that a positively worded condition requiring an applicant to enter into a planning obligation is unlikely to be enforceable. However, it says that in exceptional circumstances a negatively worded condition requiring an obligation or other agreement to be entered into may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk, which may apply in the case of particularly complex development schemes. It also states that where consideration is given to imposing such a condition, the heads of terms or principal terms need to be agreed prior to granting permission.
31. There is nothing indicating that exceptional circumstances exist to justify a condition requiring a planning obligation in this case. Furthermore, without agreed and clear information as to the proposed arrangements for the affordable housing, such as management and staircasing arrangements, a condition to secure the affordable housing in the absence of an obligation would be vague. Based on the evidence before me, I am not satisfied that conditions to require the provision of the affordable housing would accord with the tests for conditions set out by paragraph 56 of the Framework. Moreover, in the absence of a mechanism to secure the delivery of the affordable homes, I cannot be certain that they would be provided.
32. Therefore, the proposal would not be satisfactory in respect of housing mix or density, nor make adequate provision for affordable housing. The proposal conflicts with CS Policies CS17, CS19 and CS21, and paragraphs 124 and 125 of the Framework, purposes of which are identified above.

Living conditions of future occupiers

33. The appellant has explained that Apps Court Farm is a regular venue for various outdoor events and that planning permission has been granted for this recently⁶. However, limited information has been provided as to the precise nature of the events that take place, such as their scale, frequency, duration, timing, and their potential proximity to the site. Additionally, assessments of the possible air quality, noise and light pollution impacts of the events on the future occupiers of the housing have not been provided. It is likely that some events, such as music events to which the Council's Environmental Health department refers, would have a negative impact on the future occupiers' living conditions. Based on the information provided, I am not satisfied that conditions would mitigate any impacts that might arise from events such that there would be satisfactory living conditions for the future occupiers.
34. It has not been demonstrated that the future occupiers of the development would have satisfactory living conditions having regard to air quality, noise and

⁵ Reference ID: 21a-010-20190723

⁶ Appeal ref: APP/K3605/W/20/3259700

light pollution. The potential impacts could be substantial. The proposal conflicts with DMP Policies DM2, DM5 and DM10, which seek to protect the amenity of the occupiers of property. It is also contrary to paragraph 185 of the Framework, which seeks to ensure that development is appropriate for its location taking into account the likely effects of pollution on living conditions.

Biodiversity

35. A Preliminary Ecological Appraisal was provided with the application. It assesses the entirety of Apps Court Farm. However, it relates to an application for using the site for events and not the housing scheme subject to this appeal. Moreover, the appraisal identifies that hedgerows and trees across the site have intermediate habitat value. It also states that some trees have potential bat roosting features, but the locations and details of those trees are not specified. There are hedgerows and trees in the immediate vicinity of the site and thus there is potential that habitats supporting protected species may be present on the site or nearby. Therefore, there is a reasonable prospect that the proposal would impact on protected species.
36. Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before planning permission is granted. On that basis, it would be inappropriate to condition the undertaking of further surveys. The use of conditions to require mitigation in the absence of further surveying would also be inappropriate, as there can be no certainty that such measures would satisfactorily address any harm to protected species that might occur.
37. In addition, no evidence has been provided as to whether the proposal would result in a net loss or gain in biodiversity units. This conflicts with CS Policy CS15, which requires that new development does not result in a net loss of biodiversity and where feasible contributes to biodiversity net gain.
38. I note that Natural England have not objected to the proposal, subject to mitigation measures to prevent adverse effects on a Special Protection Area and Site of Special Scientific Interest. However, this does not indicate that the proposal would not adversely affect protected species or indicate that there would not be a loss in biodiversity units.
39. It has not been demonstrated that the proposal would have an acceptable effect on biodiversity. The potential impacts on protected species could be significant. The proposal conflicts with CS Policy CS15, which aims to protect and enhance biodiversity. It also conflicts with Chapter 15 of the Framework, which explains that development should minimise impacts on and provide net gains for biodiversity. The Council alleges that the proposal also conflicts with DMP Policy DM15 in respect of this main issue; however, it relates to advertisements, shopfronts and signage and is therefore irrelevant.

Flood risk and drainage

40. The site is within Flood Zone 1 and is not identified as an area at risk of flooding. No evidence has been provided which indicates that the site has been subject to flooding historically. The scheme is supported by a drainage strategy which suggests that surface water currently discharges into the ground within the site in an uncontrolled manner. It also explains that there is limited scope for ground infiltration techniques to manage surface water runoff due to the

site's underlying geology and its historic use for landfill purposes. It is therefore proposed that surface water is discharged into two ponds located within Apps Court Farm via a below ground pipe network with flow restrictions and a swale.

41. The Lead Local Flood Authority raises concerns regarding the drainage scheme's reliance on land outside the site and recommends that further information is provided. It is also put forward that sustainable drainage features could be incorporated despite the site's ground conditions. However, the Council acknowledges that the scheme relies on land within the appellant's control and I consider that there is a reasonable prospect of an adequate drainage scheme being delivered. Precise details of the scheme, the incorporation of sustainable drainage features and the scheme's management arrangements could be secured by conditions.
42. The proposal would be satisfactory in respect of flood risk and make adequate provision for sustainable drainage. It accords with CS Policy CS26, which seeks to minimise flood risk and requires new development to contain sustainable drainage systems. It also accords with Chapter 14 of the Framework, which aims to ensure that development does not increase flood risk elsewhere and incorporates sustainable drainage systems. I also find no conflict with the Flood Risk SPD, the Planning Practice Guidance or Sustainable Drainage Systems: Non-statutory technical standards for sustainable drainage systems, which provide guidance in relation to flooding, in respect of this main issue.

Other considerations and whether very special circumstances exist

43. Paragraph 148 of the Framework explains that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
44. The appellant contends that CS Policies CS1 and CS2 are out of date. Having regard to the Council's extensive housing issues, it appears that the borough's needs cannot be met within existing settlement boundaries. Compelling evidence to the contrary has not been provided. Moreover, the most important policies for determining the appeal are out of date as per paragraph 11(d) of the Framework in any case. Furthermore, in the context of the housing issues and the extent of the shortfalls, the proposal would make a significant contribution to the supply, delivery and choice of homes in the area. Even though issues have been identified with the proposed housing density and mix, and I cannot be sure that the affordable housing would be delivered, the proposed housing provision, tenure and mix attract substantial weight in favour of the development.
45. The proposal includes the provision of a new pedestrian footway and crossing points and reserves land for a possible future combined footway and cycleway. These would be usable by both the future occupiers and benefit existing highway users including those travelling to other parts of Apps Court Farm. These matters attract moderate weight. In addition, having regard to the location and amount of housing proposed, there would be modest benefits arising from the construction process and the future occupiers spending on and engaging with services and facilities in the local area. Further, there would be some prospect for the future occupiers to travel to those services and facilities using sustainable travel modes. The Council also notes that New Homes Bonus payments would be generated. It is also common ground that the proposal

- would reduce pressure to develop land on the reportedly large areas of the borough within Flood Zones 2 and 3. These matters also attract modest weight.
46. It is put forward that the proposal would also provide public benefits due to its effect on the character and appearance of the area. However, the proposal would be harmful in that respect. As such, this matter does not indicate in favour of the development.
47. If I were minded to allow the appeal, I would need to consider the effect of the proposal on the Special Protection Area, which is a habitats site in the terms of the Framework. However, even if I were to conclude that there would be no adverse effect on the habitats site, this would be a neutral consideration rather than a benefit in favour of the scheme.
48. Taken together, there are other considerations in this case that weigh substantially in favour of the development. However, the proposal would be inappropriate development in the Green Belt, which is harmful by definition. There would also be substantial harm to the openness of the Green Belt. In addition, the proposal would moderately harm the Green Belt's purposes to check the unrestricted sprawl of large built-up areas and protect neighbouring towns merging into one another, and cause limited harm to its purpose to assist in safeguarding the countryside from encroachment. Paragraph 148 of the Framework explains that any harm to the Green Belt attracts substantial weight. Furthermore, the proposal would harm the character and appearance of the site and the surrounding area, and fails to demonstrate that the future occupiers' living conditions would be satisfactory or identify its implications for biodiversity. The harm that would arise from the development is considerable.
49. Overall, the other considerations do not clearly outweigh the harm identified. Therefore, the very special circumstances necessary to justify development in the Green Belt do not exist. As such, the proposal conflicts with CS Policies CS1 and DMP Policy DM17, the purposes of which are identified above. Moreover, whilst the presumption in favour of sustainable development at paragraph 11(d) of the Framework is applicable, the policies in the Framework that protect the Green Belt provide clear reasons for refusing the development.
50. I find that the proposal conflicts with the development plan as a whole. The material considerations identified do not outweigh the proposal's conflict with the development plan.

Conclusion

51. For the reasons given above, I conclude that the appeal should be dismissed that planning permission should be refused.

Mark Philpott

INSPECTOR