



Appeal Decision

Hearing held on 5 September 2023

Site visit made on 6 September 2023

by Grahame Kean BA (Hons) Solicitor, MIPROW, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2023

Appeal Ref: APP/L3625/W/23/3317013 Land at Sandcross Lane, Reigate RH2 8HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Rob Collett of Miller Homes Limited against the decision of Reigate and Banstead Borough Council.
- The application Ref 21/00400/OUT, dated 10 February 2021, was refused by notice dated 23 September 2022.
- The development proposed is: outline application with all matters reserved, except access, for the phased development of a mixed-use residential-led new Sustainable Urban Extension at land south west of Reigate, comprising up to 300 residential dwellings, including, approximately 65 bed care home; 3 traveller pitches; a replacement scout hut; a retail/commercial use; a country park; and associated open spaces, landscaping and infrastructure.

Summary Decision: The appeal is dismissed.

Main issues

1. The main issues initially reflected the reasons for refusal of permission by the Council which were a) whether the development as a sustainable urban extension (SUE), in the absence of a five-year housing land supply (HLS) shortfall, should be released for development, in light of Policy MLS1 of the Council's Development Management Plan 2019 (DMP) and the "urban area first" strategy in Policy CS6 of the Council's Core Strategy 2014 (CS); and b) whether adequate provision would be secured for any additional need for: health care facilities; scout facility; highway and public transport improvements; and on-site affordable housing.
2. At the time of the hearing the absence of a s106 obligation formed a matter of dispute, however a completed version was supplied that resolves the matters contained in the second main issue for this proposal made at this time.
3. The principal controversial matter in dispute, broadly speaking, is whether now is the right time to release the appeal site which forms the majority of allocated

site SSW2 for development. If not, the weight to be given to the benefits occasioned by the proposal is also disputed.

Background

4. The Secretary of State notified the main parties that the appeal should follow the hearing procedure because HLS was best dealt with in a round table discussion. They were notified on 3 May 2023 of the start date for the hearing procedure, statements being required by 7 June. The Council's statement was received in accordance with this timetable. It flagged up that an update would be made when the latest Housing Delivery Monitor (HDM) was published in June 2023. At that point, if refusal reason No 1 was not withdrawn, the Council said it would explain why it would still have a 5YHLS at April 2024.
5. As discussed further below, the Council policy was that if the HDM predicted a shortfall in the 5YHLS, allocated SUEs would be released for development. The annual monitor was duly published for 2023 and predicted a HLS in 2024 of 6.43 years, well above the required 5YHLS. The appellant disputed this figure, having already submitted at the time of its application to the Council, a supporting statement with evidence that a 5YHS could not be maintained from April 2024 going forward.
6. The applicant had already submitted on 8 August 2023, which was not unreasonable in the circumstances, an additional submission to counter the Housing Monitor update from the Council. However, at the hearing I was unimpressed with the lateness of a plethora of further documents proffered by the appellant and I excluded from consideration many of them considered not strictly necessary to my determination.

The site and surroundings

7. The SUE land of which the appeal site forms the lion's share, is some 16.67ha, including a small parcel of land in Thakeham Homes' control. The appeal site is some 14.9ha incorporating accesses, south-west of Reigate, adjacent to residential development on its southern and eastern edges, at Sandcross Lane and Slipshatch Road. The northern part of the site is adjacent to Sandcross School and to the west is Whitehall Lane.
8. The site is mainly flat but inclines to a stream in the middle and comprises agricultural fields, including a significant band of trees through the middle section and along its boundary, with hedging and other vegetation. A tree preservation order has been made over the Thakeham part of the SUE land, not included in the appealed application. In the northeast of the site are hardstanding and a small single-storey building.
9. The SUE is allocated in DMP Policy SSW2 for about 290 homes, including 65 specialist units for older people, 3 traveller pitches; small-scale local commercial facilities, including shops, to complement existing nearby facilities; land for a new health facility if need is demonstrated, and open space in the western part of the site.
10. The site is a mix of low and medium accessibility with regard to parking standards and is at risk of surface water flooding due to the watercourse through the site. Ancient woodland is located to the south of Slipshatch Road.

The reserved matters are appearance, landscaping, layout, and scale.
Submitted parameter and site layout plans are indicative only.

Matters not in dispute

11. Chapter 5 of the National Planning Policy Framework (NPPF) seeks to boost the supply of homes. Paragraph 60 points up the need for a sufficient amount and variety of land to come forward where needed, to address the needs of groups with specific housing requirements and to develop land timeously.
12. The NPPF states that there should be a continuous supply of deliverable sites with an additional 5% buffer to ensure a wide choice of housing. The higher buffer of 20% applicable where councils have a record of persistent under-delivery, is not relevant here. The Housing Delivery Test results for the Council mean that a 5% buffer is applied for the purposes of the calculating the 5YHLS.
13. The Planning Practice Guidance (PPG) Paragraph 032 Reference ID: 68-032-20190722, revision date 22 July 2019, (Housing supply and delivery: counting completions when calculating 5YHLS: How can past over-supply of housing completions against planned requirements be addressed) states that:

"Where areas deliver more completions than required, the additional supply can be used to offset any shortfalls against requirements from previous years."
14. In July 2019, the Council stated that its CS was up to date for the purposes of Regulation 10A (Town and Country Planning) (Local Planning) (England) Regulations 2012 and the NPPF. Policy CS6 allocates SUEs within the broad areas of search of Horley, East Redhill and Southwest Reigate. Policy CS8 states that the area of Reigate (Area 2b) is allocated for housing development of 500-700 homes in SUEs by 2027.
15. Policy CS13 states that at least 6,900 homes should be delivered in the plan period to 2027, 1,400 of which would be provided in SUEs. The SUE sites would be released when necessary to maintain a 5YHLS of deliverable sites. The phasing of that release is set out in the DMP. When adopted, the CS anticipated that SUEs would be released in 2022/23 and made a total estimated provision of 7,400 dwellings.
16. Policies CS14 and CS15 deal respectively with the need for a range of housing types and tenures for the elderly and special accessibility housing, and (CS15) the need for a five year supply of deliverable sites for Gypsy, Traveller and Travelling Show People, as well as broad locations for six to ten years.
17. The DMP was adopted in September 2019. Policy SSW2 identifies the SUE under consideration. DMP Policy MLS1 sets out how such sites should be released, considering the Housing Monitoring Report for the next year and subsequent year in question. MLS1.2 states:

"The Housing Monitor will be published annually, in June each year, setting out the position as of April that year. The Housing Monitor will:
 - a. Set out the 5YHLS position for that year and establish whether or not the Council can demonstrate a 5YHLS.*
 - b. Make an assessment of the likely 5YHLS position in April of the subsequent year, based on an up to date assessment of the Council's housing trajectory."*

18. Policy MLS1.1 states:

The Council's Housing Monitor will proactively consider the need for release of the allocated sustainable urban extension sites based on a forward-looking mechanism. In order to maintain a five-year housing supply it will forecast whether such supply can be maintained over the next year and subsequent year. Where the Housing Monitor predicts that a five year housing supply would not be maintained over this period, allocated sustainable urban extension sites will be released for development as necessary SUEs will be released for development.

19. Policy MLS1.3 states:

The Council will only grant planning permission for sites outside of the annual monitoring process if it can be clearly demonstrated, via up to date evidence, that there is a five year supply shortfall.

20. The latest HDM published by the Council in June 2023 sets out the position at 1 April 2023. In relation Policy MLS1 its prediction is for the period commencing 1 April 2024. In addition to the HDMs the Council had published in August 2019 a site-by-site housing trajectory.
21. The CS period is up to 31 March 2027 and plans for the development of 6,900 homes between 2012 and 2027. Both main parties agree that the Council can demonstrate a 5YHLS at April 2022 and April 2023. The five-year periods to be considered run from 1 April 2023 and 1 April 2024, however such periods run beyond the "plan period" by one year and two years respectively. The CS does not identify the number of homes to be delivered in the period after 2027.
22. NPPF, paragraph 61 states that the minimum number of homes needed should be informed by a local housing need assessment by using the "standard method" (SM) unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals.
23. The SM is derived from the average annual household growth over the next ten years uplifted to take account of the fact that in this district house prices are higher relative to the earnings of people who work there (affordability of the area). This uplift (a multiplier of 1.65) is then subject to a "cap" on the increase an authority can face, resulting here in a housing requirement of 644 dwellings per annum (dpa).
24. In the 2022 HDM the Council did use the SM figure of 644 dpa for the final year of the plan, but resiled from this "hybrid" approach (in its published Erratum) and used the CS annualised requirement of 460 dpa for all 5 years.
25. The main parties agree that the principle of development and proposed land uses would comply with DMP Policy SSW2 and include a policy compliant level of affordable housing of 35%. The proposed mix of dwellings is not an issue in dispute and would be compliant with Policies CS14 and DES4 in providing for family housing.
26. The Council provided a supplementary statement on 21 July 2023 to go with the 2023 HDM which was published on 30 June 2023. The appellant replied with a document entitled "Appellant Note Following the Submission of the Reigate and Banstead 2023 Housing Monitor on 30th June 2023" (additional

note dated 8 August 2023). I agreed these could stand as supplementary to the parties' previous statements.

Essence of the case for the Council

27. In respect of the timing of the application and whether it is premature in light of the above policies and the 5YHLS position, the Council considers that the site should not be released for development.
28. The Council asserts that in the period from 1 April 2024 it can demonstrate a 5YHLS. It reviewed the CS in June 2019, looking comprehensively at each policy, concluding that no policies needed modifying or updating. The CS therefore remained a robust, up-to-date and appropriate strategic policy framework for managing development in accordance with paragraph 11, NPPF. In the context of paragraph 219, NPPF full weight should be given to the policies in determining this appeal.
29. During the DMP examination hearing the site promoter supported the amendments made to Policy MLS1 that removed the sequential release of SUEs.
30. In the 2022 HDM the 5YHLS as of 1 April 2022 was 2,382 net additional dwellings, ie 8.72 years' supply against the CS requirement and the NPPF 5% buffer requirement. The predicted supply as of 1 April 2023 was 1,480 net additional dwellings, ie 5.49 years' supply.
31. The Council noted that the 5-year periods at issue from April 2023 extend beyond the end of the plan period in 2027. It was advised that it should not adopt the "hybrid" approach to calculation beyond the end of the plan period. The local plan figure of 460 homes per year should be used, giving a marginally better HLS position in 2023 and 2024 than estimated in the 2022 HDM.
32. When it came to the 2023 HDM, the current, deliverable 5YHLS as of 1 April 2023 is stated to be 1,826 net additional dwellings, equating to 7.80 years' supply against the CS requirement and the NPPF 5% buffer. The predicted supply as of 1 April 2024 is 1,216 net additional dwellings, equating to 6.43 years' supply. Further, as of 1 April 2023, the HDM indicates that the Council can demonstrate a 16.36 years supply of deliverable land for gypsy and traveller pitches.
33. Thus in summary the relevant tables in the HDM for 2023 show that as of April 2023 the Council can maintain a 5YHLS as well as in April 2024 and in accordance with DMP Policy MLS1 the allocated SUEs are not required to be released for development at this time.

Essence of the case for the appellant

34. After publication of the 2023 HDM the Council provided a detailed site-by-site year-by-year HLS trajectory. In its additional note the appellant had in effect carried out its own assessment of the HLS position, drawing attention to its updates in respect of the Council's "hybrid" approach and the baseline housing requirement. It disagrees with the Council's current approach and its view is that the correct 5YHLS figure for the current 5-year period is 6.68 years and for the future 5-year period it should be 4.49 years.

35. CS Policy CS13 does not provide a housing requirement figure after March 2027 so using the 460 dpa figure beyond then is unjustified and the only option is to use local housing need as calculated by the SM, ie currently 644 dpa. For the second 5-year period the requirement should be 1,353 dwellings rather than the Council's figure of 947. Given the projected housing supply of 1,216 dwellings for this 5-year period from 1 April 2024, the conclusion is that there is a 5YHLS of 4.49 years for this period.
36. The justification for the figure of 4.49 years (for 2024/25 to 2028/29) is found in Appendix 1 of the additional note. Tables 4.8 and 4.9 show the difference in the housing requirement positions of Council and appellant, being an additional 405 dwellings required to be found according to the appellant, over 5 years from 1 April 2024. Both parties appear to give the same full credit for the oversupply in previous years, however the appellant confines the pro rata spread up to the end of the plan period. On the supply side, the 2023 HDM predicts a supply from 1 April 2024 as shown in Table 5.2 of 1,216 dwellings, including 841 with permissions, and a windfall allowance of 375 units. Therefore, and as illustrated in Table 6.2 the 5YHLS for this period is 4.49 years.
37. As to affordable housing, the 2023 HDM included an update on affordable housing delivery, however the appellant raised concern over the projected supply, and whether the Council would be able to meet its minimum requirement up to the end of the plan period, by reference to the updated information in the HDM.
38. On the basis of the CS target over the plan period to deliver 1,500 affordable homes (21.7% of 6,900 homes), an average 17.9% of the target is met by monitoring year 22/23, and the 2023 HDM suggests that the minimum required number of affordable homes over the plan period will not be delivered with a shortfall of c60-271 affordable homes.
39. In any event there were other material considerations, notably the delivery of the type of housing and affordable housing (including for older people) which the appellant says warrants granting permission now for the appeal site. Further and in overall terms, very significant weight should be applied to the delivery of the development plan allocation, provision of housing, including affordable housing and the delivery of extra care/assisted living, to the provision of green infrastructure, providing wider public benefits as it should to the provision of a new scout/community facility. The highways measures secured via condition or s106 obligation offer benefits to the highways network and should be afforded significant weight.
40. Although a significant change to the site would obtain, no harm arises to the loss of countryside, nor are there identifiable harms that prevent planning permission being granted, all matters have been dealt with or could be mitigated through the s106 obligation or by planning conditions.

Reasons

41. The NPPF does not seek to place a cap on housing supply, but a minimum requirement of "at least" should be set in the development plan for the plan period as a whole, not for individual years. Previous appeal decisions such as APP/G1630/W/17/3184272 have been considered but they do not constitute a

binding precedent as to the treatment of over-supply. In the absence of specific guidance as to oversupply when calculating the 5YHLS requirement in national policy, the matter is left to the decision-taker based on the particular facts of any given case, such discretion to be exercised reasonably. Housing delivery is annualised by the Council to show progress towards meeting the overall housing number and it does not appear unreasonable for it to include previous oversupply within the calculation of the 5YHLS.

42. Deliverable housing sites comprise those with outline or full permission, specific sites without planning permission and a windfall allowance. I note that permissions on windfall sites from the inception of the plan period have exceeded this allowance. Some information was supplied as to likely lead-in times for developments informing the housing trajectory which have been considered. They are subject to various assumptions and indeed the appeal site due to its size may be expected to have a longer lead-in time for development to come to fruition than others. If the site is not released now there is of course a risk that it would not be developed by 2027 as outlined in the plan.

Affordable housing

43. I note that the provision of 1,500 affordable homes over the plan period equates to an average of 100 homes per year (1100 to date) and to date 1,129 units have been delivered, slightly above target. The applicant compares the fact that this figure is 17.9% of the total affordable and market units (which it estimates as the equivalent of 6,303 homes delivered to date) with the overall requirement of 21.7% affordable housing calculated from the plan figures.
44. The trajectory of delivery over past years is criticised but it can vary from year to year and be over or under the annualised target. The appellant has singled out the past 7 years in order to point up the single instance of being over target. But if one looks at all the actual figures delivered (Table APP2.1, column 9) there is in fact no discernible trend whatsoever away from the average trendline which is uniformly slightly above 100% of target. I do not see a compelling reason for selecting part only of the data series and the difference as expositied is exaggerated.
45. DMP Policy DES6 contains the 35% affordable housing requirement on allocated greenfield urban extension sites. The supporting text notes this approach will assist with affordable housing delivery but *"the need is considerably higher than it is possible to deliver"*. The supporting text to CS Policy CS15 makes clear that *"this is a realistic target and has been developed taking account of likely levels of housing delivery."*
46. The applicant thinks this perceived downward trend will continue but it is not a downward trend in my opinion, and in fact only 371 affordable homes remain to be built over the plan period. Its analysis suggests that only some 100 units would be delivered leaving a shortfall of 271 units, but there are uncertainties in the information supplied, such as the fact that some sites are delivering a contribution in lieu of on-site provision. Projecting the affordable housing share of the overall housing delivered to date, ie 1,741 homes in the 2023 Housing Trajectory, produces a considerably reduced shortfall of 84 or 60 fewer than the overall plan target (60 is preferred as one should take the whole data series). In short the year on year variations calculated in the level of affordable

housing as a percentage of the overall housing requirement do not materially support release now of the appeal site.

Use of the SM beyond the plan period

47. The supporting text to CS Policy CS13 at paragraph 7.4.6 explains that under Policy CS13 the release of sites for SUEs would be triggered if the Council were unable to demonstrate a five year land supply, based on the residual annual housing requirement *calculated over the plan period 2012-2027*. Indicators used to monitor this policy include proposals for - and the delivery of - additional dwellings within the borough, housing trajectory and five year land supply. After the end of the plan period the appellant is entitled to ask why it would be rational to continue to use the annualised dpa requirement as a target for years going forward, when its local housing needs assessment suggests a different figure should be used.
48. NPPF, paragraph 61 deals with strategic policies, not planning decisions and it is in that former context that local housing need assessments are referred to as using the SM. Paragraph 74, NPPF states that a minimum of 5 years' worth of deliverable sites should be calculated against either the housing requirement in the plan or the local housing need where the plan policies are more than 5 years old. The effect of paragraph 74 and footnote 39 seems clear to me. If the relevant policies have been reviewed and found not to require updating, which is the case here, then there is no compulsion to use the "hybrid" approach despite the policies themselves being more than five years old. The fact that the "plan period" may expire before periods stipulated in the policy trigger, does not in and of itself render policies relevant to that trigger, out of date. An approach that continues to allow greenfield sites only when necessary to maintain a 5YHLS remains an important and relevant adopted plan policy.
49. The CS examination did conclude that an annual average of 460 dpa (dpa), was sound but that there was no upper limit defined in the plan and a shortfall of over 2,000 dwellings against the full objectively assessed housing needs (OAHN) would remain. However I do not read this as a "very clear" exhortation to, "*if possible and within the scope of the Plan, seek to exceed*" that minimum housing requirement as the appellant suggests, given the Inspector's OAHN findings of annual average need of between about 600 and 640 dwellings. I note the conclusion (paragraph 69) was that it was "*not possible to meet this shortfall sustainably without conflict with the other aims of the Framework.*" The sustainable figure accepted by the Inspector as a sound assessment of the annualised housing requirement, ie 460dpa is the relevant figure for applying the local plan policy.
50. I note in passing that the 2019 Review of the CS at p24 did state that "*the adopted requirement in CS13 continues to strike an appropriate and delicate balance between the need for housing growth and the protection of the borough and its environment from unsustainable development. The housing needs identified by the new standard method remain substantially beyond the level which the Core Strategy Inspector found to be capable of being sustainably delivered in the borough.*"
51. I also have some doubts as to whether the SM is capable of accurately assessing housing need, given that the statistical information used in the methodology is nigh on ten years old (the existing guidance is unequivocal that
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the 2014-based projections must be used to set the baseline for the SM). *East Riding of Yorkshire Council v. Secretary of State for Levelling up, Housing and Communities [2021] EWHC 3271 (Admin)* was referred to. The circumstances of that case are somewhat different from those that obtain here.

52. I have considered the paragraphs in the judgment cited by the parties. What stands out for me is that, although it was essentially a “reasons” challenge, the court summed up (paragraph 44) the difference between a housing requirement from the emerging local plan as *“one which has been planned and prepared for taking account of all of the requirements necessary to demonstrate to independent scrutiny that the figure is sound”* whereas the local housing needs figure produced by the standard methodology *“is produced through the application of a set calculation”*. And of course the plan in question here has passed through that independent scrutiny and found to be sound.
53. The local plan policies are clear that SUEs to deliver the housing target in policy CS13 will be required. Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years and the CS and DMP are due to be reviewed anyway next year. The difference between the parties as to the 5YHLS for the 5-year period from 1 April 2024 is not to my mind so significant that, assuming the appellant is correct, it is “necessary” to apply DMP Policy MLS1 now to the appeal site.
54. It seems to me that the Council has correctly applied DMP Policy MLS1 that is critical to the issue in dispute. The HDM controls the position as far as concerns Policy MLS1.1 and is clear as to the adequacy of the 5YHLS for the periods in question. Policy MLS1.3 does not just apply to SUEs, it is concerned with managing land supply more generally and is concerned with whether it can be *clearly* demonstrated, that there is, ie at present, a five year supply shortfall. There is no dispute that there is a 5YHLS for 2023-2028, but in view of the different approaches by the parties both of which are at least rationally based, it cannot be clearly shown for the purposes of Policy MLS1.3 that a similar situation obtains from 2024.
55. I do not wish to embark on an overly forensic examination of the text of Policy MLS1 but in MLS.1.2 the tenor of sub-paragraph a. clearly differs from sub-paragraph b. in that a more exact calculation is expected in the former whereas *“an assessment of the likely...position”* is called for in the latter. In my view the Council is entitled in the present circumstances to adopt an approach that uses the annualised housing requirement from the adopted local plan for the purpose of calculating the 5YHLS for the periods referred to in Policy MLS1.1. If the shortfall identified by the appellant in the second five-year period were clearly the correct approach based on the SM, I would have said that it were not “necessary”, within the terms of the second sentence of Policy MLS1.1, to release the SUE of which the appeal site forms part, given that a figure of 4.49 years is not unreasonably distant from the required standard, that a review of both plans is due next year, and not least given the importance of keeping the SUEs, although part of the allocation, in reserve by the mechanism used in the plan itself that points up the priority to accommodate planned growth within the existing urban area (ie the “urban areas first” approach) which seems an eminently sensible approach and that accords with national planning policy in seeking to making effective use of land in urban areas (paragraph 11, NPPF).

Planning balance

56. Whilst there are several areas in which the proposal would be compliant with relevant development plan policies as agreed with the Council, the fundamental policies at issue in this appeal, DMP MLS1 and CS CS6 related to the release of site SSW2 and the importance of the "urban area first" approach, would be breached if the development came forward now.
57. The proposal would boost the supply of homes as urged by paragraph 60 of NPPF and bring forward much needed affordable homes. The proposal is for potentially marginally more residential dwellings than is allocated in DMP Policy SSW2 which would be a positive although slight benefit if the indicative layout or similar is approved at reserved matters stage. The planned open space would benefit future residents and the wider community to a significant extent. The proposed market and affordable housing including for older persons are also matters that should carry significant weight. The provision for the gypsy and traveller community is relatively modest and carries limited weight given the favourable supply position.
58. Generally a mix of uses other than residential in SUEs helps to ensure businesses may thrive and the retail provision is a moderately positive benefit. However the community provision (scout hut), off-site highways improvements, healthcare contributions and other benefits secured through the s106 obligation and by proposed conditions are benefits that are exacted more through the needs to which the development gives rise than otherwise and their effect is neutral or of limited positive benefit in the planning balance.
59. The benefits of the scheme would be very significant overall, but insufficient to outweigh the substantial and considerable harm that would be caused to the policy for SUEs clearly set out in the CS and DMP and the proposed development would not comply with the development plan as a whole. The other material considerations advanced in support of the proposal do not indicate that the development plan policy should not thus be applied.

Other matters

60. Several representations from interested persons were received and have been considered, however they do not alter my findings described above. In particular I heard from the representative of Dovers Green Developments, who were concerned that the approach of the Council and the local highway authority to developer contributions to fund strategic network improvements in the area could frustrate the delivery of other allocated sites. This may be a potential concern but does not fall for further consideration in light of my findings.

Formal Decision

61. The appeal is dismissed

Grahame Kean

INSPECTOR

APPEARANCES

APPELLANT

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