



Appeal Decision

Site visit made on 25 July 2024

by **R Lawrence BSc (Hons), PGDip (TP), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 December 2024

Appeal Ref: APP/C3620/W/23/3331023

**Land rear of Opus 1, Ryebrook Business Park, Bay Tree Avenue,
Leatherhead, Surrey KT22 7LA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Leatherhead 20 Limited against the decision of Mole Valley District Council.
- The application Ref is MO/2022/2168.
- The development proposed is redevelopment to provide residential units; landscaping; associated undercroft car parking, refuse and cycle storage.

Decision

1. The appeal is allowed and planning permission is granted for redevelopment to provide residential units; landscaping; associated undercroft car parking, refuse and cycle storage at Land rear of Opus 1, Bay Tree Avenue, Leatherhead, Surrey KT22 7LA in accordance with the terms of the application, Ref MO/2022/2168, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have used the Council's site address as this more accurately describes the location. The appellant has also used this within their appeal form.
3. During the course of this appeal, the Council advised that they adopted the Mole Valley Local Plan 2020-2030 (LP) on the 15 October 2024. The LP has replaced the Mole Valley Local Plan 2000 and the Mole Valley Core Strategy October 2009. The main parties were invited to provide comments on the new LP in relation to their cases. I have had regard to the comments received in my determination of this appeal.
4. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Comments were invited from the main parties on whether these have any relevance to the appeal. No comments were received.
5. A signed and completed agreement made under s106 of the Town and Country Planning Act 1990 was submitted dated 22 March 2024. This would secure an off-site affordable housing contribution of £75,000. A Statement of Common Ground between the Council and the appellant has been submitted addressing matters of agreement in relation to this financial contribution. I have had regard to this in my determination of the appeal. As a potential benefit to the scheme, this is explored further within my reasoning below.

Main Issues

6. The main issues are the effect of the proposal on

- the living conditions of neighbouring occupiers of Opus Court with regard to outlook and privacy,
- the character and appearance of the area, and
- whether the proposal would provide a suitable standard of accommodation for future occupiers with regard to amenity space provision.

Reasons

Living conditions

7. The appeal site comprises an open surface car park and a block of flats, Opus Court. This fronts onto Kingston Road and contains a projection which runs parallel to Bay Tree Avenue. A landscaped garden which is partially enclosed by Opus Court, separates the flats from the car park. Occupiers of the flats immediately adjacent to the appeal building have an open outlook across the car park towards Bay Tree Avenue. This part of Opus Court contains several habitable room windows, is four storeys in height and would be separated from the proposed building by a modest landscaped area.
8. The appeal building would interrupt the outlook currently enjoyed by the adjacent occupiers from facing habitable rooms. The building would extend across the full width of the facing windows within close proximity. The affected windows are large, providing an important, high-quality source of outlook. Whilst the height of the building has been reduced in comparison with the previous appeal¹, it would still be of a significant scale which would appear overbearing and dominant. The effect would be a harmful sense of enclosure, that would adversely affect the outlook. The reduction in the quality of the outlook from the affected windows would be considerable. As such, although side windows provide an alternative source of outlook which limits the extent of the harm, this would not fully compensate for the adverse effects which overall I find to be considerable.
9. The daylight and sunlight assessment² concludes that the neighbouring flats would retain an appropriate level of sunlight and daylight, such to comply with BRE guidelines. Having regard to the availability of other windows to serve many of the affected rooms together with the orientation of the flats, there is no substantive evidence to dispute these findings. As such I am satisfied that the proposal would be acceptable in terms of daylight and sunlight.
10. The proposed building would include windows facing directly towards habitable rooms and windows within Opus Court. However, these would be obscurely glazed, thereby precluding any direct intervisibility. Similarly, the use of screens on the balconies would preclude views towards the existing residential flats. As such, there would be no adverse effect on the privacy of neighbouring occupiers. Nonetheless, the absence of harm in these terms is a neutral matter and does not alter my findings in terms of outlook.

¹ APP/C3620/W/22/3313897

² Daylight and Sunlight Assessment dated December 2022 produced by T16 Design

11. Having regard to the above, the proposal would result in a considerable adverse effect upon the living conditions of neighbouring occupiers of Opus Court in terms of outlook. The proposal would therefore conflict with the requirements of Policy EN4 of the LP. This requires, amongst other matters, that development proposals ensure that the amenity of neighbouring residents is not significantly affected, including in terms of outlook and privacy. The proposal would also conflict with the requirements of the Framework which include providing a high standard of amenity for existing and future users.

Character and appearance

12. The appeal site is positioned within a mixed-use built-up area. Many of the surrounding buildings have a commercial use and are large in scale. The architecture of surrounding buildings is varied. The existing car park dominates the appearance of the appeal site and contributes to the open aspect. Trees lining Bay Tree Avenue play an important role in softening the otherwise hard landscaped surroundings.
13. There are no designations for special visual quality, heritage assets within the setting or nearby or any buildings of notable architectural quality. Similarly, there are no features that give the locality a distinguished or unusual character or appearance.
14. The proposed building would be significant in scale, and its footprint would extend across a significant portion of the car park. As a result, the open aspect that currently exists would be lost, amounting to a significant change to the site's appearance particularly when viewed from Bay Tree Avenue. Nonetheless, the proposed building would sit comfortably amongst the scale of surrounding buildings. Furthermore, the appeal building would introduce an active frontage along Bay Tree Avenue, which is currently dominated by views of car parking. Similarly, the proposal's design, which would have a simple contemporary appearance, would be in keeping with the varied architecture that surrounds the site.
15. The proposed soft landscaping would be limited in scale, primarily focused on the site boundaries. However, the existing street trees, would augment the extent of greenery around the building and combined with the proposed planting would soften the appearance of the building, particularly during the summer months when landscaping is in leaf. This, together with the proposed architecture, would represent a positive change in comparison with the existing surface level car park that exists currently.
16. For the above reasons, I conclude that the proposed development would be acceptable in terms of the character and appearance of the area. The proposal would therefore accord with the requirements of Policy EN4 insofar as they relate to the effect on local character. The policy states that development should complement the character of the area and respond to the prevailing pattern of development. Furthermore, the proposal would accord with the requirements of the Framework which seek to achieve well-designed and beautiful places.

Standard of accommodation

17. The proposed flats would benefit from private amenity space by way of private balconies together with communal landscaped amenity areas.

18. My attention has not been drawn to any LP policies which set any specific requirements in respect of private amenity space. Nonetheless, the provision of amenity space is a factor which contributes to the overall standard of accommodation. In this regard the Framework advises that development should create places which promote health and well-being, with a high standard of amenity for existing and future users.
19. The size of the proposed balconies varies between the flats. The majority of these are of an ample size providing an attractive, functional amenity space for future occupants. I accept that there are a small number of balconies which are more modest in scale, however, these still provide a functional, usable space, and the majority of balconies benefit from a degree of enclosure, thereby providing a good level of privacy. The balconies would be in addition to the communal landscaped areas, which represent an attractive high quality amenity space. Overall, these amenity areas would contribute to a good standard of accommodation for future occupants. The proposal would therefore accord with the requirements of the Framework in relation to providing a high standard of amenity for future users.

Other Matters

20. A completed planning obligation has been submitted which secures an off-site affordable housing contribution of £75,000, this offer was provided by the appellant following discussion with the Council. The Framework and Planning Practice Guidance states that planning Obligations should only be sought where they meet all 3 tests, including that the Obligation is necessary to make the development acceptable in planning terms.
21. The viability study submitted in support of the application finds that the viability of the proposed scheme, even without the provision of affordable housing is marginal. The study concludes that the scheme would not therefore be viable if any affordable housing requirement was applied. As such, notwithstanding the submission of a completed obligation, it is a matter of common ground between the main parties that a financial contribution towards affordable housing is not necessary to make the development acceptable in planning terms. Given this evidence, I cannot be satisfied that the planning obligation would be fairly and reasonably related in scale and kind to the development. The contribution that would be secured would render the project unviable. I therefore find that the obligation is not necessary in order to make the development acceptable, would fail the tests set out and as such, it would not be lawful to take it into account.
22. Interested parties have raised additional concerns with the proposal that sit outside the main issues, including in relation to increased traffic, drainage and other local infrastructure, the level of car parking and environmental impacts. However, these matters have been subject to consultation with independent professionals, none of whom has raised objection (subject to conditions) and I have no substantive evidence to justify finding differently. Some matters raised, such as in relation to waste and refuse and effects from noise and the construction process, could be effectively dealt with through appropriate conditions.
23. Anti-social behaviour is not a matter which can be directly controlled through the planning process. However, the layout of services such as waste and recycling, car parking and communal amenity spaces is considered to be

appropriate, would be controlled further through condition, and as such, there is no evidence that the proposal would increase the likelihood of anti-social behaviour occurring.

24. The frustrations of the appellant in respect of the lack of pre-application engagement initially provided by the Council have been noted. However, this does not affect the merits of the proposal and as such has had negligible bearing on the outcome of this appeal.

Planning Balance

25. The proposal would result in harm to the living conditions of neighbouring occupiers. I have judged the magnitude of this harm to be considerable. This amounts to a conflict with the recently adopted development plan. As set out in my above reasoning, Policy EN4 aligns with the requirements of the Framework, relating to providing a high standard of amenity for existing and future users and I attribute considerable weight to the conflict with this policy. Given this, the proposal would be contrary to the development plan as a whole.
26. The proposal would provide 50 dwellings, which would make a valuable contribution towards the supply of housing in the Borough, which is heavily constrained. It would also contribute towards the government's target to significantly boost the supply of homes. The new dwellings would deliver an appropriate mix of dwelling sizes, such to meet the local housing need. The new homes would be delivered on a brownfield site within a highly sustainable location. I am mindful of the emphasis in the Framework on giving substantial weight to the value of using suitable brownfield land within settlements for homes.
27. The latest housing land supply information before me, is that following the adoption of the LP, the Council is able to demonstrate a five-year supply of housing. However, there has been no update to the housing delivery data since the adoption of the LP. As such, in that regard the latest information before me is that the Council's housing delivery is less than 75% of its housing target. There is no evidence before me that the position has improved and the below 75% position indicates that the Borough is persistently failing to deliver housing numbers. The provision of the additional units which are significant in number would appreciably improve the position and I therefore give this significant weight.
28. The construction of the proposed development would deliver both temporary and permanent economic benefits. The addition of 50 houses in a location close to the town centre would provide a boost to the viability and vitality of the town, through increased footfall to local business. The proposal would provide financial contributions to local infrastructure which would be made through Community Infrastructure Levy contributions (a separate mechanism to the submitted planning obligation), to avoid a burden on local services and infrastructure. Temporary economic benefits would arise from the construction process. Given the above, there are clear social and economic benefits that weigh in favour of the appeal, to which I attach significant weight.
29. The scheme would be acceptable in terms of matters including the principle of development, affordable housing, highway safety and parking, character and appearance, the standard of accommodation for future occupants,

sustainability and energy, biodiversity and flood risk. However, the absence of harm in these respects is a neutral matter.

30. As a result of the housing delivery position, paragraph 11dii of the Framework applies. In these circumstances, footnote 8 of the Framework establishes that the policies which are most important for determining the application are deemed out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The site is not in a protected area.
31. The identified benefits associated with the delivery of 50 dwellings, given the Council's housing delivery position, collectively would be substantial. As such, whilst there is a conflict with a relevant policy in the development plan, considering the material considerations outlined above, the adverse impact of granting permission does not significantly and demonstrably outweigh the benefits. Consequently, the scheme would represent sustainable development within the meaning of paragraph 11d which weighs in favour of the scheme and indicates that planning permission should be granted.

Conditions

32. The Council has suggested a number of conditions in the event of my allowing the appeal, I have considered these in accordance with the Planning Practice Guidance and the Framework. I have edited some of the suggested conditions for clarity and enforceability.
33. A time limit and plan numbers conditions are required in the interest of certainty. I have imposed several conditions which, due to their nature, require the submission of details prior to the commencement of development. Those details include a scheme of noise and vibration attenuation and ventilation, a scheme of investigation and remediation to deal with contaminated land and a surface water drainage scheme. The imposition of these conditions has been agreed by the appellant and are in the interests of living conditions for future occupiers, environmental management and to minimise surface water run-off and flood risk. It is necessary for these conditions to be pre commencement to ensure details are agreed before abortive works which may affect them are undertaken. In relation to the surface water drainage scheme and contaminated land, verification reports and a condition to deal with unexpected contamination are also necessary.
34. Details of external materials, boundary treatments together with the implementation of a landscaping scheme are necessary in the interest of the character and appearance of the area. Two conditions relating to the provision of landscaping have been recommended. These overlap in terms of their content and it would not be reasonable to impose both. As a suitable landscaping scheme is shown on the submitted plans, I have imposed the suggested condition requiring its implementation, rather than a revised landscaping scheme.
35. A condition requiring additional details in respect of the provision and storage of refuse and recycling facilities is necessary in the interests of character and appearance and to ensure that those facilities can be effectively stored at the site. Measures to reduce the carbon emissions of the development are required in order to maximise the use of renewable energy. Conditions relating to

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highway safety and parking, namely a parking management plan, the provision of space for vehicles to park and turn, the provision of electric charging points and the provision of cycle storage are necessary in order to ensure sufficient parking for the development, in the interests of highway safety and to promote sustainable travel.

Conclusion

36. The proposed development would conflict with the development plan but material considerations indicate that a decision should be made other than in accordance with it.
37. For the reasons given above, the appeal is allowed.

R Lawrence

INSPECTOR

Richborough

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos JM-070-PL-1300, JM-070-PL-1301, JM-070-PL-120, JM-070-SS-0003, JM-070-PL-1200, JM-070-PL-1201, JM-070-PL-1202, JM-070-PL-1104, JM-070-PL-1103, JM-070-PL-1102, JM-070-PL-1101, JM-070-PL-1100- 1, JM-070-PL-1100, JM-070-PL-2100 and JM-070-PL-1105.
- 3) Prior to the commencement of development, a detailed scheme of noise and vibration attenuation and ventilation sufficient to prevent overheating and maintain thermal comfort shall be submitted to and approved in writing by the Local Planning Authority taking into account the principles detailed in the Environmental Noise Survey and Acoustic Design Statement Report dated 18 July 2022. The scheme shall achieve the habitable room standards as detailed in BS8233:2014 with no relaxation for exceptional circumstances. All work must be carried out by a suitably qualified person and the approved noise, vibration attenuation and ventilation measures shall thereafter be retained and maintained in working order for the duration of the use in accordance with the approved details.
- 4) At least 28 days before the development hereby permitted starts, a detailed scheme of site investigation shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on the principles detailed in RSK Geosciences Preliminary Risk Assessment dated July 2022. Before above ground development commences the scheme of assessment shall be carried out at such points and to such depth as the Local Planning Authority may stipulate and laboratory results shall be provided as numeric values in accordance with the standards of the Government Guidance for Land affected by Contamination A scheme for decontamination and verification shall then be agreed in writing by the Local Planning Authority and the scheme as approved, shall be implemented before any part of the development hereby permitted is occupied.
- 5) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the Local Planning Authority.

The development hereby permitted shall not commence until details of the design of a surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The design must satisfy the SuDS Hierarchy and be compliant with the national Non Statutory Technical Standards for SuDS, NPPF and Ministerial Statement on SuDS. The required drainage details shall include:

- a. Evidence that the proposed final solution will effectively manage the 1 in 30 (+35% allowance for climate change) & 1 in 100 (+40% allowance for climate change) storm events, during all stages of the development. The final solution should follow the principles set out in

- the approved drainage strategy. Associated discharge rates and storage volumes shall be provided using a maximum discharge rate of 2 l/s.
- b. Detailed drainage design drawings and calculations to include: a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features (silt traps, inspection chambers etc.).
 - c. A plan showing exceedance flows (i.e. during rainfall greater than design events or during blockage) and how property on and off site will be protected from increased flood risk.
 - d. Details of drainage management responsibilities and maintenance regimes for the drainage system.
 - e. Details of how the drainage system will be protected during construction and how runoff (including any pollutants) from the development site will be managed before the drainage system is operational.
- 6) Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved in writing by the Local Planning Authority. This shall demonstrate that the surface water drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls), and confirm any defects have been rectified.
- 7) No development above ground level shall take place until samples of all external facing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and thereafter retained in accordance with the approved sample details.
- 8) Before any above ground works take place, details to reduce the carbon emissions of the predicted energy use of the development hereby permitted by at least 10% through the on-site installation and implementation of decentralised and renewable or low-carbon energy sources shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of the development and thereafter retained and maintained.
- 9) Prior to the first occupation of the development, a plan indicating the position, design, materials and type of boundary treatment(s) to be erected/retained, shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed prior to the first occupation of the development, in accordance with the approved details, and thereafter permanently retained as such.
- 10) Prior to the first occupation of the development, a refuse and recycling storage facility shall be provided as part of the development, in accordance with detailed drawings to be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be retained and maintained in accordance with the approved details.

- 11) The landscaping scheme indicated on the approved plans shall be carried out in the first planting season after commencement of the development and shall be maintained for a period of 5 years. Such maintenance shall include the replacement of any trees and shrubs that die with another tree or shrub of the same size and species as that originally planted, within the first planting season following the removal, destruction or death of the original tree.
- 12) The development hereby approved shall not be first occupied unless and until a parking management plan has been submitted to and approved in writing by the Local Planning Authority, including details of parking space allocation. The parking management plan shall thereafter be maintained and delivered in accordance with the approved details.
- 13) The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and to turn so that they may exit and re-enter the public highway in a forward gear. Thereafter the parking, loading and unloading and turning areas shall be retained and maintained for their designated purposes.
- 14) The development hereby approved shall not be first occupied unless and until each of the proposed dwellings with access to a car parking space is provided with a fast charge socket (current minimum requirements - 7kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority. These car parking spaces shall thereafter be retained and maintained in accordance with the approved details.
- 15) The development hereby approved shall not be first occupied unless and until facilities for the secure, covered parking of bicycles has been provided in accordance with the approved plans. Thereafter the approved facilities shall be retained and maintained in accordance with the approved details.

*****End of Schedule*****