



Appeal Decision

Hearing held on 21 January 2025 and (online) on 18 March 2025

Site visit made on 21 January 2025

by **H Nicholls FdA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th April 2025

Appeal Ref: APP/C3620/W/24/3347210

Land at Povey Cross Farm, Hookwood

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Kempton Homes Southern Limited against the decision of Mole Valley District Council.
 - The application Ref is MO/2023/1419/OUT.
 - The development proposed is outline application with all matters reserved except access for the demolition of one residential dwelling (Use Class C3) and delivery of up to 116 new homes (Use Class C3), up to 4,250sqm floorspace for specialist housing for older persons (Use Class C2), up to 350sqm Use Class E floorspace, creation of a new vehicular access, public open space, landscaping and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline form with all matters reserved save for access. As such, I have treated any plans depicting the intended scale and layout as broadly indicative in nature.
3. A minor boundary discrepancy was corrected on an updated version of the *Landscape and Open Space Parameter Plan* which was submitted prior to the hearing (Ref 35909 105 Rev P2). As this plan only ensures that the boundaries of the site are consistent, no prejudice would occur through my acceptance and consideration of the plan, alongside those originally submitted.
4. The planning policy context has materially changed since the submission of the appeal. The Council adopted the *Mole Valley Local Plan 2020 – 2039* (Local Plan) on 18 October 2024. The effect of this is that the Green Belt boundaries were amended to exclude the site and thus, reason for refusal (RfR1) was agreed as being no longer applicable. Conversely, Policy DS42 of the Local Plan allocates the site for a housing development of around 84 dwellings, subject to adherence with specified criteria and other policies of the Local Plan. In addition, the *National Planning Policy Framework* (the Framework) was published in December 2024.
5. The Housing Delivery Test Results 2022 indicate that the Council delivered only 58% of its housing needs during the monitoring period. As a consequence of this, paragraph 11 d) of the Framework is engaged. I return to this below.

6. The above aspects are addressed in the submitted Statement of Common Ground (SoCG) dated 20 November 2024. A further *Joint Position Note – 14.01.2025* (JPN) was submitted prior to the hearing updating the position in respect of the other reasons for refusal. The JPN outlines that the fourth RfR on affordable housing was able to be resolved by way of planning obligation and that the sixth and eight RfRs on ecology were capable of being addressed by way of planning conditions. As clarified in the JPN, the second RfR on older persons' housing, third RfR on density, fifth RfR on education contributions and seventh RfR on flood risk were still outstanding. Consequently, these have formed the main issues in the appeal which were discussed at the hearing.
7. The flood risk issue (RfR7) was a matter which the parties initially anticipated would be addressed through an iterative process and agreed prior to the opening of the hearing. However, on the opening day of the hearing, the parties indicated that further time would be needed to continue the assessment and feedback process on the latest version of the flood model for the site. The hearing was adjourned after a thorough discussion and following the accompanied site visit.
8. During the adjournment, the main parties each submitted a *Position Statement* (13 and 14 January 2025 respectively¹) and a final SoCG on flood risk matters² was submitted on the 12 March 2025. The hearing resumed online on the 18 March 2025 specifically to allow discussion on the flood risk issue.
9. A *Compliance Statement*³ setting out how the requested planning obligations comply with the *Community Infrastructure Levy Regulations* (2010, as amended) (CIL) was received from the Council on 29 January 2025. A completed S106 planning obligation⁴ was received on 5 February 2025 and the appellant's final comments⁵ on the remaining areas of disagreement on the planning obligation were received on 6 February 2025.

Main Issues

10. The main issues are:
 - whether the scheme would adequately address any risk of flooding and avoid the increased risk of flooding elsewhere;
 - whether the proposed density could be adequately accommodated on the site whilst creating a high quality of development;
 - whether the location of the housing for older people would be suitable having regard to the location of services, facilities and quality of living environment; and
 - whether education contributions secured by planning obligation are necessary to make the development acceptable in planning terms.

Context

11. The irregularly shaped appeal site extends to around 7.8 hectares and is currently agricultural land associated with Povey Cross Farm to the west of the village of Hookwood.

¹ Hearing documents 11 and 12

² Hearing document 13

³ Hearing document 8

⁴ Hearing document 9

⁵ Hearing document 10

12. The proposal seeks to develop up to 116 dwellings, a C3 unit and a complex of housing for older people (falling within a C2 use class). The main access onto the site would be from Reigate Road, via the plot currently comprising the dwelling known as Rivoli which would be demolished. A secondary access for emergency purposes is also proposed south of the main access route. The scheme would also comprise areas of public open space and associated works.

Reasons

Flood Risks

13. The southern part of the site is within Flood Zones 2 and 3. This is based on the fluvial risks associated with the unnamed watercourse which passes through the site and becomes a Main River, known locally as the Beverley Brook/Whitley Brook in the curtilage of 'Rivoli', and connects to the River Mole approximately 1km to the north-east of the site.
14. Acknowledging that the site is now allocated under the current Local Plan, Policy DS42 stipulates in (6) that built development should be avoided within Flood Zones 2 and 3 and that sustainable drainage measures should be incorporated to address and mitigate the risk of fluvial flooding. Amongst other things, related Policy INF3 requires that development seeks to avoid, reduce or mitigate flood risks by means such as undertaking site-specific Flood Risk Assessments, and adopts flood mitigation measures that are appropriate to the source of the flooding.
15. The site specific flood modelling aims to determine how the development can be safely designed taking account of the flood risk constraints. Whereas the preferred approach to providing flood compensation is to provide a like-for-like compensation strategy, the spatial, flooding and topographical constraints around Rivoli and Reigate Road do not allow for such.
16. The philosophy behind the scheme's evolving flood mitigation measures is therefore to hold water back on the site and to limit the flow being passed forwards towards Reigate Road, therefore reducing the burden once the floodwater reaches the properties around Reigate Road. To do this, a flow control is proposed beneath the emergency access road and through alterations of land levels (raising and lowering), removal of structures and realigning sections of the watercourse to provide additional flood storage and slow down overland flow routes. The access routes (both primary and emergency) should be raised to be situated above the 'design flood' event, i.e. the 1% annual probability (100-year) + 12% fluvial storm scenario, and any residential dwellings and the C3 use class building close to the access would need to be further elevated in relation to the same so as to be safe from flood risks.
17. As detailed in the Preliminary Matters section above, the main parties had anticipated agreement on the flood risk issue prior to the opening of the hearing. However, no resolution had been reached and, despite various extensions and written submissions, the final SoCG on flood risk matters outlines the parties' continued disagreement about whether the flood risks can be adequately addressed such as to meet the minimum requirements of Local Plan Policies DS42 and INF3. If and when a version of a model to address the flood risks can be agreed, an updated Flood Risk Assessment and Flood Risk Modelling report will need to be prepared.

18. As at the resumption on the 18 March 2025, the parties indicated that the hydraulic component of the model was closer to being agreed but that the hydrology component still had far more outstanding risk factors to address. It is alleged by the appellant that it is highly unusual to have fundamental disagreements on the modelling at this stage of the process and that the outstanding aspects could be resolved through the imposition of a condition to require a Flood Risk Assessment and supporting flood modelling prior to commencement of development. If and when the model can be agreed, the full compensatory floodplain storage works would need to be approved by the Council with input from the Environment Agency. The suggested condition also seeks to secure details of the sequence of works from the existing to the completed development and finished landscape surface to avoid an increased risk of flooding during the works. However, the Environment Agency and Council maintain that the modelling is too far away from being agreed to be certain that the scheme could avoid the increased risk of flooding and that the uncertainty is too great a risk to leave to a planning condition.
19. In addition to a number of dwellings and the C3 use class indicatively adjoining the access road, the fixed means of primary and emergency access would be through areas affected by flooding. The fixed position of the accesses will further affect the extent of floodplain storage and their levels and related changes to topography elsewhere are related to such. At this stage in time, there is no conclusive Flood Risk Assessment supported by modelling work that indicates that the development would be safe over its lifetime and would avoid the increased risk of flooding elsewhere. In addition, the proposal seeks to exceed the indicative capacity of the allocation in Policy DS42 and provide units to be occupied by older people arguably less capable of responding quickly to any flood events. The absence of these details brings the scheme into conflict with Policies DS42 and INF3 of the Local Plan. If and when said details are resolved to the satisfaction of the Council and Environment Agency, a material amount of additional work is also necessary to stipulate the sequencing of events and ensure the ongoing management regimes are in place for the related flood mitigation measures.
20. I have considered the tests for planning conditions as set out in the Framework and Planning Practice Guidance. Given the necessity of avoiding the increased risk of flooding and inconclusive nature of the evidence before me in relation to such, I cannot be certain that a condition would not unreasonably impact on the deliverability of the development.
21. My attention has been drawn to an example of an approach where an objection from the Environment Agency was overcome based on the information available and a condition was recommended seeking details including a flood resilience modelling sign off and detailed design of flood storage areas. However, the wording of that recommended condition also specifies that “...all areas modelled as being located within the Q100 plus climate change flood extents will not be developed” and an accompanying note states, inter alia, that there were no fundamental issues with the flood modelling and that though the flood extent and depths were not anticipated to change, some layout alterations may be necessary.
22. The difference in this case is that the point of access is a fixed built aspect of the scheme and additional residential dwellings and a C3 use class unit also appear to be proposed in higher risk flood areas. On the evidence before me, it does not appear that the quantum of development proposed could be entirely located within Flood Zone 1. Furthermore, there is no consensus that issues with the flood

modelling have been resolved at this point in time or that the flood extents and depths won't materially change between different versions of the model. I am also mindful that in the extended period between December 2024 and March 2025 given to allow the parties to resolve the matter, no conclusive agreement has been reached that the scheme could be made appropriate in flood risk terms.

23. Taking all of the above into account, my view is, even though the appellant agrees to any alterations to the suggested condition, there is insufficient information at this stage, in the context of fixed points of access, on which to be certain that a condition would allow the development to proceed safely and without possible deliverability consequences. Therefore, the scheme does not adequately address the risks of flooding and avoid the increased risk of flooding elsewhere and therefore conflicts with Policies DS42 and INF3 of the Local Plan. For similar reasons, it also fails to adhere to the provisions of the Framework, paragraph 170, where it seeks to direct development away from areas at the highest risk of flooding and where development is necessary in such areas, should be made safe for its lifetime without increasing flood risk elsewhere.

Density and Quality of Development

24. Policy DS42 of the Local Plan sets out that the approximate developable area of 4.2 hectares has an *indicative capacity* of around 84 dwellings. Dividing the indicative figure by the developable area equates to a density of around 20 dwellings per hectare (dph), which is low. However, if the maximum figures are used, the proposed number of dwellings exceeds the indicative figure in Policy DS42 by up to 32 dwellings and by up to 4,600 sqm of additional buildings in other use classes.
25. The submitted *Land Use Parameter Plan* shows the built development broadly within the central and northern parts of the site, with the southernmost areas left as largely undeveloped owing to the relevant flood risk constraints. A separate small pocket of dwellings and the Class E buildings would sit behind dwellings fronting Reigate Road, close to the point of access. The C2 use class buildings are shown as being located in the northeastern part of the site. Connections are indicatively shown to adjoining parcels of land which are similarly allocated for housing development. A separate *Building Heights Parameter Plan* shows most of the residential development at two storeys in height, with an area of 3 storey high dwellings enclosed within the central upper part of the site. The C2 use buildings are shown on the same plan as being up to 2.5 storeys in height.
26. The description of development embeds some flexibility in the final form of development that may come forward through the use of the words 'up to' 116 dwellings and specified maximum square metres of floor area of the proposed buildings in other use classes (C2 and E). By its very nature, an indicative figure cannot be taken as an absolute minimum or maximum but rather, as a guide, taking account of the density characteristics of the surrounding area and site constraints. If the scheme were to come forward at the maximum end of the ranges sought, then the totality of built mass and its intensity throughout the site would far exceed the approximate 20 dph envisaged under Policy DS42.
27. However, it does not appear certain through the available detail that this would be harmful to the character and appearance of the area through incompatibility with its relatively low density characteristics. The development of adjoining sites or the

manner in which they are planned may have a bearing on the relationship of the site to its surroundings. Additionally, further detail may come forward through any future reserved matters applications that allow a more robust assessment of the suitability of all of the aspects of quantum, massing, extent, relationships and height, rather than on a comparison of relatively crude figures and high level plans.

28. Therefore, on the basis of its outline nature and the details before me, there is nothing to indicate that the density of the scheme could not be adequately accommodated on the site whilst creating a high quality of development. As such, there would be no direct conflict with, in particular, Policy DS42 of the Local Plan.

Location and quality of Older Persons' Housing

29. The wording of the RfR in relation to this issue was initially based on an insufficiency of information about the nature of the accommodation. Following clarification by the appellant and agreement that such aspects would be secured through a planning obligation, the issue for the Council became one of the unsuitability of the location for specialist housing for older people (Use Class C2) in terms of its connection to everyday facilities that would be used by future occupiers and the suboptimal location within the site to provide an outlook and meaningful external space.
30. In terms of the policy context, Local Plan Policy H6 requires under (1)(a) that sites for housing for older people should be well-connected in terms of access to shops, community facilities including health care, public transport and other services as appropriate to the needs of future occupiers. It also requires under (1)(e) that the housing should be designed to meet any of the other needs of the client group.
31. The appeal site is allocated for a residential development taking account of its sustainable location in relation to the facilities available within the large village of Hookwood and nearby service centres. Facilities such as a supermarket, bus stops and community centre are available within around 300 metres of the appeal site entrance. The medical centres in the local area are reportedly private or specialist in nature, meaning that GP appointments must be made further afield, necessitating travel by either car or bus. Bus services are available to Horley which is around 2km away. The site would have other points of connection for pedestrians with Reigate Road so that a range of route options were available in addition to the fixed vehicular accesses proposed.
32. Whilst the absence of a general doctor's surgery and pharmacy within Hookwood is a drawback in terms of the connectivity of the site and Policy H6, overall, I consider that the site would be sufficiently sustainably located for a development comprising older persons' housing. Facilities and/or shared demand transport services available within the complex itself may go some way to remedying any shortcomings in the accessibility to healthcare facilities for less ambulant residents, although I do not consider that the appellant is correct to say that the provision of the complex could reduce the demand on local healthcare services.
33. In terms of the location of the older persons' housing, it has been shown to the north-east of the site so that the larger buildings better relate to the larger scale commercial building adjoining Kennel Lane. In this position, the complex would be within an urban context and would not have longer reaching views over large green spaces. The occupants of housing for older people would be more likely to be at home and at leisure for greater periods of the day than those of a working

age. Logically therefore, they would stand to benefit from uplifting views, well designed and proportioned gardens, and generally high quality surroundings at least as much, if not more than younger residents and young families.

34. The high level nature of the submitted *Parameter Plans* and details does limit the ability to adjudge whether or not outlooks from the respective blocks of housing for older people would be sufficient. Similarly, the external spaces appear to be relatively minimal so as to separate the blocks from one another and from the site boundaries. However, detailed design at reserved matters stage could ensure that these aspects have been adequately designed to afford future residents sufficient space, outlook and quality of environment.
35. Overall, I consider that the older persons' housing would be sufficiently well located to access a range of everyday facilities and subject to future details, could be designed to at least meet the needs of the future residents. Therefore, the proposal would not conflict with Local Plan Policy H6.

Education Contributions

36. Local Plan Policy D1 concerns infrastructure delivery and states that the Council will seek planning contributions to ensure the necessary infrastructure to support development using both the Mole Valley District Community Infrastructure Levy (CIL) and S106 agreements/planning obligations. It indicates that funds may be used from both the levy and from pooling S106 contributions from a number of developments to pay for the same piece of infrastructure.
37. The Policy also goes on to state that residential developments will be supported where it is sustained by and coordinated with the delivery and maintenance of necessary infrastructure both on and off site. The Policy's objective is essentially to ensure that development has regard to the presence of existing infrastructure and the need to reinforce existing and/or provide new infrastructure in a timely manner to support new development.
38. The County Council has calculated, using a pupil yield forecast, that the development would generate c. 58 additional pupils across the following age bands: c. 8 early years, c. 29 primary and c. 21 secondary. As such, a contribution has been sought to provide additional school places for each relevant age band based on a multiplier relevant to the final number of dwellings.
39. The allocation of CIL is determined on an annual basis, having regard to all the infrastructure priorities at the time. The 'backup' mechanism included within the S106 at Schedule 2, Part 2 allows for the contributions, or parts thereof, to be requested from the developer in the event that there is a funding shortfall to mitigate the education impacts of the proposed development. However, if the CIL monies have been made available to the County Council to offset the impacts of the development, then the contributions will not be sought from the developer.
40. The appellant seeks to challenge the inclusion of the 'backup' mechanism and says that as an allocated site, the anticipated pupil yield has been baked into the Local Plan and Infrastructure Delivery Plan (IDP) to be funded by CIL. It has been put to me that the notable anticipated shortfall in early years provision would also be remedied by a project which has recently received planning permission and that there were no anticipated shortfalls in primary or secondary school places to justify S106 contributions from this development.

41. In my view, this aspect was not given sufficient attention by the main parties until a late stage in the S106 drafting, meaning that much of the written evidence on this came late. Nonetheless, I am more persuaded by the evidence that additional pupil places would be needed to accommodate the development. I reach this view with particular regard to the exceedance of the proposed number of dwellings compared with the anticipated Policy DS42 capacity and the related Local Plan and IDP growth expectations and the Policy expectations to ensure infrastructure is made available in a timely manner alongside the delivery of the development. That said, given the date of the response from the County Council and more recent adoption of the Local Plan, I do not discount the potential for things to have moved on and for them to do so again in the near future given the Council's continued preparation of the Planning Obligations Supplementary Planning Document (draft).
42. Therefore, on the basis of the evidence before me, I consider that the backup provisions to secure the necessary and timely delivery of education infrastructure would be necessary to make the development acceptable in planning terms. Without exercising the option to strike these out by using the 'blue pencil' clauses, the S106 includes for these such as to accord with the provisions of Policy D2 of the Local Plan in any event.

Planning Balance

43. By reason of its inability to make the development safe from flooding and avoid the increased risk of flooding elsewhere, the scheme conflicts with policies DS42 and INF3 of the Local Plan, and thus, with the development plan when taken as a whole.
44. Though the Council has a recently adopted plan and no shortage in the supply of housing land, the recorded under-delivery against the Housing Delivery Test requirements engages the approach set out in paragraph 11 d) of the Framework.
45. Where engaged, paragraph 11 d) indicates that permission should be granted unless, under 11 d) i), the application of policies in the Framework that protect areas or assets of particular importance provide a strong reason for refusing the development proposed, or under ii) where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Footnote 7 clarifies that the policies that protect areas of particular importance includes areas at risk of flooding, such as the appeal site.
46. Consequently, the application of the Framework policies pertaining to flood risks provide a strong reason for refusing the appeal scheme such that consideration of paragraph 11 d) ii) does not follow. I shall however consider whether there are any other material considerations that indicate that a decision should be made other than in strict accordance with the development plan in any event.
47. The benefits of the appeal scheme include the delivery of up to 116 new homes, of which at least 84 are anticipated by the Council to contribute to the area's needs for the Local Plan period. This is a substantial benefit of the scheme. The provision of affordable housing on site would also be a significant benefit. Subject to details within a reserved matters scheme, the provision of older persons housing would also attract weight in favour of the scheme, with the related benefit of freeing up some houses within the existing housing stock.

48. The delivery of a C3 use class building could generate some social or economic advantage for the area, though quantification of such is difficult without a defined end user at this stage. The construction phase of work would generate economic benefits which attract modest weight in favour of the scheme. The provision of public open spaces, including equipped areas for play, also attract modest weight in favour of the scheme. I also attach modest weight to the provision of biodiversity enhancements including Biodiversity Net Gain enhancements. The absence of other harms weighs neither for nor against the scheme.
49. However, the benefits from the addition to the housing stock, of both open market and affordable tenures, would be more compelling if the scheme were certain to be safe from flood risk over its lifetimes and without potential detriment to the conditions of the existing housing stock through increased flood risks. Therefore, even taking the benefits and other considerations advanced in favour of the scheme collectively, they do not indicate that a decision should be taken other than in accordance with the development plan.

Other Matters

50. The main parties agreed that the proposal would not harm the significance of the nearby Grade II listed building, Povey Cross House, through development within its setting. I find no reason to reach an alternative conclusion in this regard.
51. As the appeal is failing for other reasons, it is not necessary to examine whether the other aspects of the planning obligation are necessary to make the development acceptable in planning terms. As such, whilst the appellant suggests that there may be some imprecision with the way in which projects to deliver education infrastructure enhancements are defined, this issue is not determinative.

Conclusion

52. For the foregoing reasons, the appeal is dismissed.

H Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jake Kempton	Managing Director of Kempton Homes
Nik Smith, MA MRTPI	Regional Director at Nexus Planning
Dean Swann, MCIHT FIHE	Technical Director at Brookbanks
Rosalind Andrews	Principal Solicitor, Planet Law

FOR THE LOCAL PLANNING AUTHORITY:

Katrina Sullivan-Watkins, BA(Hons) MSc	Principal Planning Officer, MVDC
Caroline Hall, MA MRTPI	Senior Planning Officer, MVDC
Ajit Gill, BSc (Hons) MSc	Planning Specialist, Environment Agency
Karrie Doust, BA(Hons) MSc	Environment Agency
Tom Penlington	Legal Services Manager and MVDC Solicitor
Kirsty Jones	Housing Services Manager, MVDC

INTERESTED PARTIES:

Dave Willmer	Local resident
Lisa Scott	Chair of Charlwood Parish Council
Simon Petit	Local resident
Cathy McNally	Local resident
Dave Parrish	Local resident
Angela Woodhams	Local resident

DOCUMENTS:

Document 1	Draft Planning Obligations SPD
Document 2	Draft Affordable Housing SPD
Document 3	CIL Charging Schedule
Document 4	Infrastructure Funding Statement 22-23
Document 5	Infrastructure Delivery Plan
Document 6	BNG Monitoring Fee Calculator
Document 7	MVDC BNG Monitoring Fee Schedule
Document 8	CIL Compliance Statement
Document 9	S106 agreement dated 5 February 2025
Document 10	Appellant comments on planning obligation
Document 11	Position statement on flood risk, 13 February 2025
Document 12	Position statement on flood risk, 14 February 2025
Document 13	Statement of Common Ground on flood risk matters
ENDS	