



Appeal Decision

Hearing held on 24 April 2025

Site visit made on 23 and 25 April 2025

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st May 2025

Appeal Ref: APP/C3620/W/24/3351839

Murreys Court, 10 Agates Lane, Ashtead, Surrey, KT21 2NF

- 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 Crispin Jameson, Davinia Vanstone, Levanter (Ashtead Limited), Beechcroft Developments Limited against the decision of Mole Valley District Council.
 - The application Ref is MO/2023/1539/PLA MAJOR.
 - The development proposed is described as 'Application seeking Phased Full Planning Permission for the Retention and refurbishment of Grade II Listed Barn for resident's lounge/estate office, demolition of principal building and cottage, and partial demolition and redevelopment of existing stable complex. Construction of new buildings comprising assisted living units (Class C2) and a care home (Class C2) with new landscaping and tree planting, new public pedestrian access between The Murreys and Agates Lane, and use of existing bellmouth on The Murreys for vehicular access'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since issuing its decision, the Council has adopted the Mole Valley Local Plan 2020-2039 (LP). This has superseded the policies in the Mole Valley Core Strategy and the previous version of the Local Plan. I must base my decision on the most up to date planning policy and this is what I have done. The parties had an opportunity to address this change through their submissions.
3. There was some discussion at the hearing as to the nature of the proposal. The description of development is clear in that the proposal is for development falling within the C2 use class (residential institutions) and this is also shown on the drawings. A condition (or as it turned out a planning obligation) can be used to ensure the development is occupied as proposed. I have therefore assessed the proposal based on the description of development.

Main Issues

4. Before the hearing opened the Council and appellants reached common ground in respect of some of the reasons for refusal. A financial contribution towards affordable housing was agreed and is secured through a planning obligation. The Council also confirmed that it no longer objected to the removal of Tree 23 (T23) and Tree Group 24 (G24) following further evidence on their condition. Following the submission of additional biodiversity evidence by the appellants, which was reviewed by the Surrey Wildlife Trust, the Council removed its objections relating to the impact on protected species and a failure to demonstrate biodiversity net gain.

5. During the hearing the Council confirmed that it was satisfied the proposal would not result in reasonable future pressure to fell T65, T67, T79, T82 and T96 or works that would significantly risk their longevity.
6. Consequently, the main issues in this appeal flow from the Council's remaining areas of concern, some raised for the first time during the appeal. They are:
 - The effect of the proposed development on the character and appearance of the area, including trees;
 - The effect of the proposal on the significance of The Barn, a Grade II listed building.
 - The effect of the proposed development on the significance of non-designated heritage assets; and
 - The effect of the proposed development on biodiversity, with particular reference to the traditional orchard, a Habitat of Principal Importance.

Reasons

The effect on the character and appearance of the area

7. The appeal site encompasses Murreys Court, a large historic property with a collection of outbuildings set within generous grounds. It is positioned in 'The Lanes', a character area identified in the Built-Up Character Areas Appraisal Supplementary Planning Document (SPD). Map regression demonstrates that The Lanes was a rural area largely free of development until the 19th Century. In this respect, Skinners Lane and Agates Lane are visible on the 1838 Tithe map and are broadly flanked by open fields. Harriots Lane is another old route. The character area is named after these locally distinctive and historic lanes which are intimate, narrow and winding routes flanked by remnant hedges and trees. In some respects, they are almost rural in character. Thus, the SPD explains that small-scale developments are easier to accommodate, whereas large scale proposals are more difficult to do so without substantially changing the character of the area.
8. In the second half of the 19th Century development began to occur along the lanes. The 1912 Ordnance Survey map suggests that development was generally large houses in large plots save for Gladstone Road. Some of this development appears to be ad hoc and incremental whereas other areas, such as Highfields, were planned. Parts of The Lanes encompasses linear streets with consistent building lines which probably date from the early half of the 20th Century. West Farm Avenue being a clear example. In more recent times suburban cul-de-sacs such as The Murreys, Summerfields and Bourne Grove have been constructed behind the established frontage development.
9. This morphology has resulted in a varied overall townscape to The Lanes with buildings of different ages, sizes and styles arranged in variable configurations. Indeed, the coherent suburban character of West Farm Avenue with its neat grass verges and avenue of trees is different to The Murreys with its informal cul-de-sac form. Both streets are different to Agates Lane, where the underlying rural character is still evident on account of its narrow width and absence of pavements. Agates Lane is also characterized by a more organic and less homogenously

- planned appearance, with mature historic properties mixed in with newer infilling. This is all within a generous and informal landscaped context.
10. A handful of the older properties in Agates Lane, such as Murreys Court, Merry Hall and 17 Agates Lane are arranged over three floors and are local landmarks on account of their size, attractive appearance or history. The newer infilling is predominantly two storeys in height, perhaps on account of local covenants that have been imposed to restrict the height of buildings. Overall, buildings tend to positively address the street with their principal elevation.
 11. Accordingly, The Lanes does not have a single character. Instead, it is a product of different phases and eras of development. That said, there are unifying features that include the modest residential suburban character, the predominantly two storey height of buildings and generous levels of planting.
 12. The grounds of Murreys Court are large and very pleasant with ornamental planting, areas of lawn and what appears to be a partially walled orchard. Indeed, the area has a blanket Tree Preservation Order. However, such a large garden is untypical of The Lanes and therefore the appeal site has been allocated for residential development in the LP. In fact, residential development at the appeal site has been approved in the past. No party at the hearing advanced a case that the appeal site should not be developed in some way. Consequently, some effect is to be anticipated. The area of dispute is the extent of development.
 13. Policy DS3 of the LP sets an indicative capacity of 30 dwellings. The Inspector examining the LP tested this as part of their deliberations and concluded that this figure appears reasonable when considering the site constraints, these being the protected trees and on-site heritage. Nevertheless, the Inspector did indicate that the capacity could be increased if further assessment through the development management process indicates it to be appropriate. This was discussed at the hearing and common ground was established between the Council and appellants that the 30 dwellings figure is not a ceiling but a guide. Consequently, they agree that a scheme proposing more than 30 homes would not be at odds with Policy DS3. Instead, it is the effects of such a scheme which need to be considered.
 14. The appeal scheme would be the type of large-scale proposal that the SPD raises concerns about. It would result in the demolition of Murreys Court, a cherished local landmark, as evidenced by the representations received. Accordingly, such an approach would not be sympathetic to local character and history. To a lesser degree the same can be said of removing The Cottage and perhaps the partially walled orchard.
 15. Block F would replace Murreys Court and in isolation this building would have some attractive elements with characterful hipped roofs, chimneys and a central porch providing legibility to the main entrance. Windows would also have a balanced composition and the tile hanging would reference the local vernacular. Overall, the elevations would be pleasant with a hint of the arts and craft styling found locally. The ridge height would also be slightly lower than Murreys Court and the linear pattern of development along Agates Lane would be respected.
 16. However, Block F would be a large structure the scale of which would jar with other buildings nearby. In fact, it would be a bulkier building than Murreys Court on account of the combined effect of the height, width and depth. The depth would be especially problematic as it would fail to harmonise with nearby structures and

result in a dominant and imposing addition moved closer to Agates Lane. The removal of tree group G85 would result in the building appearing stark in the street scene. In addition, the principal elevation would face into the site rather than positively address the street. Balconies would likewise be an alien feature in the lane. Block F would also appear cramped as the undeveloped space around it would not be commensurate with its scale.

17. In addition, Block E would be another large building that would appear cramped on account of its scale and siting and because it would be shoehorned into the corner of the site between protected trees and Block F. Indeed, there would be little space between Blocks E and F. The forward projecting element of Block E would also result in an imposing addition due to the limited set back from the street.
18. The provision of a new hedge in lieu of the recently erected and poor-quality fence would be a beneficial amendment. However, it would not address the impact of Block E, which would be visible over the hedge, and softening effect of existing planting would be reduced by the removal of most of tree group G94. The combined effect on the street scene of Blocks E and F would be a cramped arrangement of large buildings. In this respect the impact would be different to that across the road, where moderately sized two storey houses are set further back from the edge of the lane and in commensurately sized plots.
19. Overall, the intensification of development when viewed from Agates Lane would engender a dense urban appearance out of character with the spacious suburban, almost rural, context of Agates Lane. The looming presence of the large care home, which would be visible over Block G, would compound this effect. The proposal would be both strident and discordant, albeit from localised views within a restrained visual envelope. This would amount to a significant adverse impact on the street scene of Agates Lane. The Council suggests the proposal would be an over development and I consider this a fair description.
20. The care home would be a very large building when it is considered relative to those nearby and in The Lanes more generally. It would be arranged over three floors with a considerable footprint and a long, generally unrelieved ridge height. Accordingly, the care home would not reflect the character and appearance of buildings in the area, principally those in The Murreys and Shires Close which provide the immediate context. In addition, T25 would need to be felled to facilitate the construction of the care home. This is an impressive Category B Corsican Pine visible from both Agates Lane and The Murreys. This tree has group value with T79, T91 and similar off-site trees to the east of 18 The Murreys. The loss of T25 would harm the amenity of the area.
21. There has been some attempt to soften the impact the care home would have. In particular, the elevations would be broken up by gables and tile hanging. Space would also be provided around the building and the shortest elevation, which would be similar in width to some of the houses in The Murreys, would face this cul-de-sac. The care home would also be set back from the site boundaries behind established landscaping and would be orientated to address the internal street and thus the new footpath. Overall, felling T25 and erecting the care home would have a moderate adverse impact on the character and appearance of the area.
22. In addition to the above, there would be some additional modest harm from Block C, because it would be another large building squeezed in between woodland and

- Blocks B and K. Indeed, T65 and T67 would have to be repeatedly pruned to accommodate this building. Such an outcome is not good design. Although such works are unlikely to harm these trees, it would nevertheless prevent them from growing larger. This would be unfortunate given their amenity value as early mature Category B trees. Also, the southern elevation of Block C would be especially bulky and thus result in a poor juxtaposition with Block B. This effect would be visible from the footpath proposed to link The Murreys and Agates Lane.
23. T95 is an early mature Category A Lime of high public amenity value. It would be necessary to repeatedly prune this tree to ensure it does not affect Block J or hamper the passage of vehicles. This would inhibit its ability to reach its full stature. That said, the Council's main concern seems to be the extent of development in the root protection area. BS-5837 suggests that around 20% of an RPA can be built within and the scheme is proposing 19.9% with a Cellweb system. The Council did not really articulate why this would be unacceptable. Therefore, I am satisfied, on balance, that the longevity of T95 would be secured, albeit in a diminished state on account of regular pruning.
 24. The Council raised legitimate concerns that T88 would have an oppressive impact on the occupants of Plots 26 and 27 due to its size and proximity. As a mature tree, it may not increase significantly in size. As a result, future occupants would be able to judge the impact when deciding whether to move in. However, the tree is not covered by the TPO as it is outside the appeal site. Therefore, if future occupants changed their minds, they would be able to undertake significant pruning works without seeking the Council's permission. Given the relationship, I consider this likely. Such an impact would reduce the amenity value of a Category B tree, but it is not prominent, and the works are unlikely to harm its longevity. Indeed, there is evidence of past pruning. Overall, the likely need to regularly prune T88 to maintain adequate living conditions would result in minor harm to local amenity.
 25. The parking area to the south-west of the care home would be hard up to this structure and amount to a relatively large area of hardstanding. However, and on balance, there would be enough planting around this space to adequately soften its impact. As such, this aspect of the proposal would not harm the character and appearance of the area. The same can be said of the parking proposed around Block J. The proposal would also include compensatory planting in excess of the number of trees being felled on a ratio of 1:1.2. This would go some way to mitigating the extensive tree loss and achieve a verdancy to the development over time as indicated by the CGI images. However, these aspects of the scheme would not mitigate for its failings.
 26. In conclusion, this is not a case where there has been an absence of design. Indeed, the Design and Access Statement demonstrates there has been a genuine attempt to assimilate the proposal into its context. However, there is an inherent incompatibility between the scale of development proposed and the ability of the site to accommodate it without serious harm to the character and appearance of the area. Thus, I find that the proposal would cumulatively result in a substantial adverse impact on the character and appearance of the area.
 27. As such, it would be at odds with Policy EN4 of the LP taken as a whole, because it would fail to positively contribute to, or complement, local character and be of an appropriate scale, height and massing. Furthermore, the proposal would conflict with the requirement in Policy EN9 of the LP to provide sufficient space around

important existing trees to allow them to grow to maturity. The proposal would also deviate from Policies AS-H5, ASEN2 and ASEN3 of the Ashted Neighbourhood Plan, because it would not visually integrate with its surroundings when having regard to local character or retain some significant trees.

The effect on the significance of The Barn, a Grade II listed building

28. The Barn was listed in 1977 and is probably a 17th Century agricultural structure. It is timber framed and weather boarded save for one wall which is finished in tile hanging dating from the 19th Century. The position of large central doors suggests it was a threshing barn although it has latterly been used as stables and for general ancillary storage to Murreys Court. Despite repairs, including significant works to the roof in the 1980s, it is a remarkable survivor that is a repository of historic building techniques and agricultural practices. The building also has a simple rustic charm. It therefore has archaeological¹, architectural² and illustrative historic value and this imparts the building with a high level of significance.
29. At present, The Barn is experienced as part of a historic farmstead that includes The Stables, a mid-18th Century building now connected to Murreys Court, and The Former Farm Buildings and Cottage, which are modest late 19th Century buildings. Murreys Court is also an important component of the farmstead as the former farmhouse. This relationship of a grand principal home aside a farmyard is a component in understanding and experiencing The Barn as an integral part of a historic farmstead. There is some suggestion that Murreys Court, which was previously called New Purchase Farm, replaced an earlier farmhouse that The Barn was contemporary with. The original farmyard would have been delineated by The Barn and Murreys Court before it was moved to the south of The Barn. The Barn therefore derives much significance from its setting within a historic farmstead. The rural character of Agates Lane adds to this experience.
30. The proposal includes the conversion of The Barn to a resident's lounge and estate office. The conversion would be reasonably sensitive as the building would not be extended, the open internal volume would be retained, and the outward appearance would respond to the agricultural character of the building. To this end, Listed Building Consent has already been granted by the Council for the physical works. However, this does not alter the fact that the agricultural character of The Barn would be diminished by the appeal scheme. This would be the case even when accounting for some positive alterations such as removing the tile hanging. Indeed, the insertion of glazed windows and the change of use would result in a reduction in its agricultural character. This would harm the innate archaeological and historic value and significance of the building.
31. In addition, Murreys Court and the Cottage would be demolished and replaced with new buildings. Block F would be a large structure that would be dominant in views of The Barn to the detriment of its aesthetic value and the ability to appreciate the modest rural scale and character of the surviving yard, which is an important component of The Barn's setting. Block H would replace the Cottage, but this would be a bulky addition set forward of The Former Farm Buildings with a scale and complicated form that would jar with the proportions and simplicity of the historic agricultural buildings. This would meaningfully harm the significance of The Barn because the farmyard, and thus the experience of the listed building, would

¹ Sometimes also referred to as evidential and research value

² Sometimes referred to as aesthetic value. In this case it is probably fortuitous

be dominated by large domestic structures. In this respect, I agree with Mr Reynold's description of quite a severe impact on the experience of The Barn due to it being lost amongst larger buildings.

32. The Former Farm Buildings (Block G) would be largely replaced as part of the proposal. The redevelopment would be sensitive to the existing building's scale, form and materials. As such, Block G would echo a farm building and continue to form and enclose the former farmyard. Similarly, the Stables would also be converted to residential accommodation in a sympathetic way by utilising existing openings and repairing the retained fabric. However, the essence of these buildings as former agricultural type structures would be eroded. In this respect, the cohesion and integrity of the farmstead would be reduced, and this would modestly harm the way the significance of The Barn is experienced.
33. The Planning Practice Guide³ explains that in general terms, the risk of a heritage asset decaying on account of neglect is best addressed by ensuring it remains in active use. Policy EN6 of the LP also seeks to secure the long-term viability of assets. Thus, it may be necessary to allow alterations to a listed building to facilitate an active use. Sometimes these alterations may be harmful to a building's significance, but that harm is outweighed by securing a use.
34. In this case, the structural survey of The Barn concludes that its condition is commensurate with its age. I do not read this as suggesting the building is at any immediate risk, although it clearly requires some maintenance and repair. Accordingly, there is no pressing need to convert the barn immediately, but it would be better to secure a use now than wait for it to deteriorate for want of one. As such, the conversion would secure the building, and this would be a notable heritage benefit to weigh against the harm identified above.
35. However, this presupposes there is no viable use at present and that the building will continue to decay due to neglect. The evidence before me does not demonstrate this is the case though. Indeed, a residence the size of Murreys Court would likely require outbuildings and The Barn could serve this function as it has done for many years. It may be possible to sensitively convert The Barn in a light touch manner to a games room, workshop, home gym or such like. Even as part of the scheme, The Barn could function as a workshop or store allowing for a less intense intervention. There is nothing before me to suggest this has been tested. It is apparent that the proposal advances a viable use, as encouraged to do so by Paragraph 210 of the Framework, but the evidence does not demonstrate it is the optimal viable use. In effect, there may be less harmful ways of securing The Barn's future. This reduces the extent of the benefit.
36. That said, I accept that these are hypothetical options rather than the tangible proposal before me, which could be secured through a phasing condition. There would also be a modest benefit from the installation of an onsite interpretation board. Accordingly, the benefits to the building from its conversion as proposed would balance with the harm that would occur to its fabric and character.
37. When turning to setting, the appellants submit that the proposal needs to be considered as a whole because it is only viable if all components are delivered. Therefore, the argument is advanced that The Barn's setting must be harmed through the construction of Blocks F and H to facilitate its conversion and long-term

³ Paragraph: 002 Reference ID: 18a-002-20190723

survival. However, the appeal scheme is only one way of developing the appeal site. For reasons I go into, the retention of Murreys Court has not been fully explored. The pre application scheme also included a smaller, simpler replacement of The Cottage. Therefore, it seems likely that some form of development could occur with a lesser effect on the setting of The Barn.

38. Indeed, Policy DS3 of the LP allocates the appeal site for development with the stipulation that the setting of The Barn is preserved. The scheme would not achieve this aim. There is nothing of substance before me to demonstrate this is unachievable or unviable and that a residential development will only come forward, and The Barn safeguarded, if Murreys Court and The Cottage are demolished and replaced with much larger structures.
39. Accordingly, and following discussions at the hearing where this point was explored in detail, I do not share the view of the Council and appellants that the proposal would result in a modest net benefit to the significance of The Barn. On the contrary, when the heritage harm is weighed against the heritage benefits, I consider there would be moderate net harm to its significance, largely through unsympathetic development in its setting.
40. In accordance with Policy EN6 of the LP, this less than substantial harm should be weighed against the public benefits of the scheme. In calibrating this balance, the Framework states that designated heritage assets are an irreplaceable resource that should be conserved for existing and future generations and that great weight should be given to an asset's conservation. Conservation in this context means sustaining, and thus not harming, an assets significance. This is not an instruction to dismiss a proposal that would harm the significance of a listed building, but it nevertheless provides a strong presumption in favour of preservation.
41. The proposal would result in moderate harm to the significance of The Barn as a designated heritage asset. This matter carries great weight. This is synonymous with the considerable importance and weight that must be given to the statutory duty to pay special regard to the desirability of preserving a listed building or its setting⁴. For reasons I go into, the public benefits of the proposal are of a high order. Overall, the benefits would be of sufficient force to outweigh the less than substantial harm that would occur. Accordingly, in this respect there would be no conflict with Policy EN6 of the LP or the Framework, as harm to the significance of a designated heritage asset would have clear and convincing justification.

The effect on the significance of non-designated heritage assets

42. The Council and appellants agree that the front wall, The Stables, the Former Farm Buildings and The Cottage are all non-designated heritage assets. All are locally listed buildings, but The Cottage is not specifically referred to in Policy DS3 as a structure to be retained and reused. The Council were unable to explain this omission, indicating that it may simply have been a drafting error.
43. The proposal would have an adverse effect on the setting of the front boundary wall on account of Block F eroding the space it currently encloses. Nevertheless, its repair, alongside the reinstatement of a section that collapsed, would result in a minor net benefit to its architectural and historic value and significance and this carries minor positive weight. Similarly, the harm that would be caused to The

⁴ See Sections 66(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990.

Stables through its conversion would be outweighed by repairing aspects of the structure and securing a use for it. This would also be a benefit of low weight.

44. The demolition of The Cottage would result in a complete loss of its significance. Nevertheless, given the modest heritage value found in the fabric and appearance of this building, the level of harm would be low. A similar conclusion can be reached in respect of the works to the Former Farm Building, as the harm to this structure caused by its partial demolition would be partially outweighed by repairing and retaining what can be salvaged as part of a near facsimile (Block G). There would be low residual harm from the loss of fabric and change in its character.
45. Murreys Court was approved for demolition as part of a past planning application, but it is now locally listed as a non-designated heritage asset and thus subject to different considerations. The views of the Council and appellants diverge as to the significance of the building. This building probably has its origins in the early 18th Century although it has been much altered since. A significant level of works took place in the late 19th Century when the building was comprehensively remodelled. Many of these works were unsympathetic, with the dormers being a particular case in point, whereas others, such as the interesting entrance porch/tunnel from Agates Lane, are of some architectural value. The level of alteration was such that following a report from Historic England the Secretary of State declined to list the building, despite it almost predating 1700.
46. The extent of alterations has no doubt effected the architectural significance of the building. It does not possess the attractive level of apparent intactness evident at other buildings locally, such as 17 Agates Lane. It also has a rather disjointed appearance. Nevertheless, its early fabric has archaeological/evidential value. In particular, the older fabric marks an important transition in domestic architecture from the vernacular to the polite. It is also apparent that the building tells us much about local history and has associative value, with The Murreys named after Murreys Court. This makes the building important to local character and identity. Overall, given the extent of alterations I edge more towards the appellants' conclusion that the building is of moderate significance. The demolition of the building would result in harm of a high order because there would be a complete loss of value/significance. This carries significant weight against the proposal.
47. The appellants submit that the demolition of Murrey's Court can be justified because it is not practical to convert it to older persons accommodation. However, even if that were the case, Murreys Court could stay as it is as a single residence. The Council also suggested that it may entertain an application to convert it to apartments. Indeed, it was suggested that this could have a positive effect on Murreys Court if unsympathetic alterations were reversed. As such, its apparent unsuitability for one use (housing for older people) does not mean the building should be demolished.
48. A second argument advanced by the appellants was that the building needs to be demolished because the scheme requires Block F for financial viability. If that is the case, then the benefits of delivering housing for older people or the contribution towards affordable housing (or both) would not be realised if Murreys Court is retained. Weighing the benefits of the scheme against the harm caused is ultimately a matter for my overall planning balance, but it is worth noting that the viability testing has not considered a scenario where Murreys Court is retained and reused or sold. This appears to be because the appellants provide housing for

older people and Murreys Court may not be suitable for this. Accordingly, it is unclear what impact retaining Murreys Court would actually have on viability.

49. The appellants also suggest that retaining Murreys Court would reduce the number of homes that could be delivered and therefore demolition results in a more efficient use of land. However, optimising the use of land is not just about delivering as many homes as possible. Instead, it involves balancing priorities, including heritage. Thus, site optimisation as envisaged by the allocation includes retaining Murreys Court as an important feature. I return to this in my planning balance.
50. In conclusion, demolishing Murreys Court would result in an adverse impact of significant weight. In addition, demolishing The Cottage and the partial demolition of The Farm Buildings are collectively matters of further moderate weight against the proposal. The proposal would be at odds with Policy DS3 because locally listed buildings would not be retained and reused. These are matters to be considered in my overall planning balance as required by both Policy EN6 and the Framework.

The effect on biodiversity, with particular reference to the traditional orchard

51. The appeal site incorporates an orchard of six live fruit trees and one dead tree⁵ that does not appear to be managed intensively. It is in a partially walled part of the garden and includes a grassed orchard floor. The orchard meets the definition of a 'traditional orchard' (TA) and is therefore a Habitat of Principal Importance (HoPI) as listed in Section 41 of the Natural Environment and Rural Communities Act. It also forms part of an ecological network of variable habitat value that includes the pocket of woodland in the northwest corner of the site as well as large residential gardens and mature trees off site.
52. The construction of Blocks E and D, including the access and parking areas, would result in the TA being lost as trees would be felled and the orchard area diminished in size. Two trees and a small area of grassland around them would be retained but this would not meet the definition of a TA.
53. The appellants submit that Policy DS3 of the LP does not require the retention of the TA. Instead, it simply states that a developer will be required to take account of the area identified as priority habitat (the TA) when formulating proposals for biodiversity net gain. This interpretation is supported by the way other policies are drafted. For example, Policies DS1 and DS2 of the LP explicitly require the retention of existing areas of priority habitat. In addition, the Council did not raise the need to retain the TA during pre-application discussions and its removal did not explicitly form part of the reason for refusal⁶. Frankly, the Council's approach of not overtly objecting to the removal of the TA and then doing so is inexplicable.
54. However, the Council's muddled assessment to date does not mean its current position (that removing the TA is at odds with the development plan) is incorrect. This is because Policy DS3 starts by stating that '*in addition to meeting the policies in the plan, any developer of the site will be required to*'. This is important, because it confirms that the criteria in Policy DS3 are additional points to other policies in the LP. In this respect, Policy EN9 of the LP states that development proposals which have an adverse impact on irreplaceable habitats or HoPI will be refused unless there are wholly exceptional circumstances. This sets a very high bar,

⁵ Evidence before me (Biodiversity Action Plan Priority Habitat Descriptions UK) suggests dead wood can form part of a TA

⁶ The relevant reason for refusal refers to a lack of information to assess compensation for the TA

- understandably so given the broader nature crises the country faces. However, as a development management test it is clearly inconsistent with the Framework, which only applies this to irreplaceable habitats.
55. Instead, the more relevant and less onerous tests in Policy EN9 is the aspiration to conserve and enhance native habitat as an integral part of a scheme, that measures to retain, protect and enhance significant habitat are included as well as measures to maintain and restore HoPI as far as possible. In effect, the policy requires avoidance as a first step, and this is consistent with Paragraphs 192(b) and 193(a) of the Framework. Policy DS3(6) does not recognise the requirement to conserve, restore and enhance priority habitats and appears to jump to compensation as part of biodiversity net gain. There is no explanation given as to why in the LP or the examining Inspector's report. The Council were unable to explain this at the hearing. Thus, Policies EN9 and DS3(6) pull in different directions, but the former carries more weight as it is consistent with national policy.
 56. The appellants submit that the existing TA cannot be retained or enhanced because Block E is needed to make the scheme work financially and there is nowhere else on site for this building to go⁷. In other words, the removal of the TA cannot be avoided. As a result, they have sought to mitigate the loss of the TA by retaining two of the fruit trees with the intention to plant others elsewhere in the site. Nevertheless, this would not amount to a TA and therefore compensation has also been proposed at a parcel of land outside Ashted owned and managed by the Surrey Wildlife Trust. Here the intention is to plant a traditional orchard of 50 trees.
 57. However, I have not seen a viability scenario run where Block E is omitted, so it is difficult to be sure that the scheme would be unviable with the TA retained. That said, I acknowledge that it stands to reason that scheme viability is challenging and removing the revenue generated by Block E would therefore have an effect. This presupposes that the current layout is the only way to develop the appeal site though. There may be other permutations where a sufficiently viable scheme is possible with the TA retained. Furthermore, the Council has a legitimate concern that the compensation would concentrate biodiversity. In this respect, I was advised by Mr Hutchinson that there is an inherent benefit in dispersing biodiversity throughout a landscape to create networks and allow people to live near and enjoy nature. This seems logical and explains why avoidance is an important first step. Ultimately, there is nothing before me of substance to demonstrate that genuine consideration was ever given to avoiding the impact on the TA. Jumping to compensation was therefore premature. I am not satisfied the evidence before me demonstrates that the scale of compensation justifies this approach.
 58. The appellants have also pointed to the condition of the trees in the orchard as justification for removing the TA. One is a Category U tree, and the others are Category C due to being of poor structural form and average physiological condition. The appellants submit that the trees are a diminishing asset that will continue to deteriorate. However, the poor condition has been put down to a prolonged absence of management. With some care, there is nothing before me to suggest the condition and longevity of the trees could not be improved. I am also mindful that a TA can include young and newly planted trees if the habitat is managed in a low intensive way⁸. Therefore, additional or replacement planting

⁷ The appellants also referred to the need to remove the orchard to accommodate the loop road, but this does not appear to be the case as the loop road would not require the felling of G86/the orchard as demonstrated by the Tree Protection Plan.

⁸ UK Biodiversity Action Plan Priority Habitat Descriptions

can retain the orchards status as a HoPI. Accordingly, too much emphasis has been placed by the appellants on the condition of the trees rather than the habitat as a whole and the way it could be managed. This does not justify bypassing the first step of avoiding the impact on HoPI. In conclusion, the failure to fully consider the retention of the TA as a HoPI is at odds with Policy EN9 and the Framework.

Other Considerations and Planning Balance

59. Paragraphs 4.35-4.37 of the LP set out the demographic changes in the district that are likely to result in a considerable need for more housing for older people in the coming years⁹. As a result, Policy H6 of the LP supports the provision of accommodation for older people but does not set a target. The examining Inspector was content with this approach. In addition, the need must also be considered through the prism of the Public Sector Equalities Duty and in this respect Policy EN5(6) of the LP requires appropriate weight to be given to meeting the needs of those with a protected characteristic, which in this case would include age and potentially disability. In this context, the appellants suggest substantial weight be given to the delivery of housing for older people.
60. Following discussions at the hearing the Council did not want to be as definitive as the appellants. The Council took a more nuanced position and suggested that there was a need for extra care accommodation, including residential care homes, but not for nursing homes. Consequently, it provided a range from moderate to substantial weight depending on how much nursing care would be provided (the weight reducing as the level of nursing care increases). Evidence provided by Surrey County Council¹⁰ supports the Council position by demonstrating that local nursing care bed provision is relatively high compared to the national average.
61. The appellants have not finalised details of the level of care that would be provided but its submissions confirm that the care home would function as both a residential and nursing home. It would not be practical to impose a condition prohibiting the provision of nursing accommodation because residents may move from residential to nursing care. Moreover, the provision of nursing care is still a benefit of the scheme. The local over provision just tempers the benefit a little. Overall, I afford the provision of accommodation for older people significant weight as a benefit.
62. In addition to this, the provision of accommodation for older people will free up existing homes, including sheltered/retirement and unoccupied homes, as residents move into the appeal scheme. The Council advised at the hearing that under occupation of housing was an issue in the district. The examining Inspector also recognised this at Paragraph 118 of their report. Accordingly, this would be another significant benefit.
63. The appeal scheme would deliver the equivalent of 95 dwellings. This would contribute to the Council's housing land supply. Nevertheless, as things currently stand the Council can demonstrate a five-year housing land supply and its last Housing Delivery Test measure was more than 75% (78%). For these reasons, the Council is on track to significantly boost the supply of housing over the next five years and delivery over the last three years has not been substantially below the housing requirement. Moreover, the Council has recently adopted a new local plan. These points all moderate the benefit of more housing.

⁹ By 2030, there will be a net need for 383 extra care units to include 126 affordable

¹⁰ Planning profile for accommodation with care for older people, Mole Valley District 2024

64. That said, the LP does not meet the identified housing need (336 dwelling per annum against a need for 460) and therefore Policy S1 of the LP states that an early review will need to occur to *ascertain whether more housing capacity is deliverable or developable*. In addition, the housing requirement under the new Framework is 833 dwellings per annum. In essence, the Council will likely need to deliver more housing in the coming years than it has currently planned for. The provision of 95 homes is a significant benefit in this context.
65. To adhere to the development plan, the appellants are intending to contribute £849,195 towards affordable housing. This contribution would be secured through the planning obligation and is necessary, directly related to the development and fair and reasonable in kind. It is therefore a matter I have considered as a significant benefit. The Council and appellants also agree that delivering housing on an allocated site which is previously developed (in part) in a sustainable location and in a district constrained by Green Belt is a benefit of significant weight. This is because the proposal would contribute to some strategic objectives.
66. For the reasons already given there would be a net benefit to the significance of the front boundary wall and The Stables, and I afford this moderate weight. The appeal scheme would also provide improved pedestrian connectivity between The Murreys and Agates Lane, economic benefits including jobs, reduced costs to the NHS as residents would have on site care/support and delivery of biodiversity net gain. These all individually carry moderate beneficial weight. Improving the bus stop and reducing the potential for surface water flooding are also modest benefits. Collectively, the proposal would have benefits of a high order.
67. Against this, the proposal would substantially harm the character and appearance of the area. In particular, the scheme would be an over development and therefore would not be well designed when applying the principles of context, identity and built form in the National Design Guide. The Framework states that development which is not well designed should be refused. In addition, the proposal would harm the significance of a listed building. The net harm would be moderate, but this is a matter of great weight. The loss of HoPI is also of concern.
68. The adverse impacts outlined above would result in the proposal being at odds with the allocation due to the impact on heritage and trees. In this context, approving the proposal would undermine the public benefit of a plan led system. In addition, some of the benefits of the scheme, such as housing delivery and a boost to the economy, could be achieved by adhering to Policy DS3. Indeed, a lower quantum of development would likely be an optimisation of the site.
69. Overall, the benefits would be weighty and would be of sufficient force to outweigh the harm to the significance of The Barn. However, they would not outweigh the totality of harm that has been identified.

Other Matters

70. Various concerns have been raised by interested parties, including reservations regarding the impact on living conditions, highway safety, badgers, the ongoing management of the site and drainage, which I have noted. However, given my overall finding below it has not been necessary to address these matters further as the appeal has failed on the main issues.

Conclusion

71. The Officer's report concludes that subject to conditions the appeal scheme would adhere to the local plan in respect of several matters, including flood risk and highway safety for example. If this is correct, then the absence of harm would be a neutral matter. Conversely, for the reasons outlined above the appeal scheme would be at odds with several highly relevant and important policies in the LP. As such, the proposal would be contrary to the development plan taken as a whole. A proposal should be determined in accordance with the development plan unless material considerations indicate otherwise, including the benefits of the scheme. In this instance, the material considerations do not indicate that the proposal should be determined otherwise than in accordance with the development plan. Consequently, the appeal has been dismissed.

Graham Chamberlain
INSPECTOR

Richborough

APPEARANCES

For the Appellants

Robert Walton KC	Counsel for the appellants, Landmark Chambers
Matthew Parry MRTPI	Senior Planning Manager, Beechcroft Developments Ltd
Dr Timur Tatlioglu IHBC	Partner at Montagu Evan
Richard Burton CMLI, AoU	Director at Terence O' Rourke
James Bardey TechArborA	Principal Arboriculturist, Aspect Arboriculture
Gabrielle Graham	Director, Surrey Wildlife Trust Ecology Services

For the Local Planning Authority

Caroline Hall, BA MA RTPI	Senior Planning Officer
Christopher Reynolds BA, MA, MSc, IHBC	Senior Historic Buildings Office
Jordon Guenigault Level 4 Diploma in Arboriculture	Tree Officer
Mr Robert Hutchinson BSc (Hons) MSc CEcol MCIEEM	Manager of SWT Ecology Planning Advice Service
Mrs Kirsty Jones BSocSci, MSC CIH	Service Lead for Housing,
Mr Barber	Planning Policy Officer
Emma Day	Legal Services

Interested Parties

Mr Plumbridge	Local resident
Mr Bruce	The Murreys and Shires Close Residents Group
Mr Bradley	Local resident

DOCUMENTS SUBMITTED DURING AND AFTER THE HEARING

- Summary of the respective positions of Mr Reynolds and Dr Tatlioglu
- List of biodiversity conditions to be added to those previously recommended
- Suggest condition to secure a landscape, tree and woodland management plan
- Draft Planning Obligation
- Final Planning Obligation dated 15 May 2025
- Email from Mr Bruce clarifying factual matters relating to trees and the care home in the appellant's submission he was unable to locate during the hearing.
- Appellants' email response to the above

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