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## Appeal Decision

Site visit made on 26 February 2014

**by Jane Miles BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 23 April 2014**

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**Appeal Ref: APP/D3640/A/13/2199538**

**1 The Avenue, Chobham, Surrey GU24 8RU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Nick Poulter against the decision of Surrey Heath Borough Council.
  - The application ref: 13/0214, dated 22 March 2013, was refused by notice dated 28 May 2013.
  - The development proposed is described as 'severance of residential garden land and erection of 4-bedroomed dwelling with garage'.
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### Decision

1. The appeal is allowed and outline planning permission is granted for severance of residential garden land and erection of 4-bedroomed dwelling with garage at 1 The Avenue, Chobham, Surrey GU24 8RU, in accordance with the terms of the application, ref: 13/0214, dated 22 March 2013, subject to the following conditions:
  - 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
  - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
  - 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
  - 4) The landscaping details submitted pursuant to condition 1 shall include an accurate plan showing the location and spread of trees and hedging on or immediately adjacent to the site, together with details of measures for their protection during the construction period. Development shall be carried out in accordance with the approved details.
  - 5) No development shall take place until a construction method statement has been submitted to and approved in writing by the local planning authority. The statement shall include details of traffic management; parking of vehicles of site personnel, operatives and visitors; loading, unloading and storage of plant and materials; boundary hoarding.

Development shall be carried out in accordance with the approved statement.

- 6) No development shall take place until details of the finished ground floor level of the dwelling hereby permitted and of the site's finished ground levels, in relation to existing ground levels (measured from a recognised datum point) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until a surface water drainage scheme for the development has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved before the dwelling hereby permitted is occupied.

### **Procedural Matters**

2. The application form clearly indicates that details of access are part of the proposal to be considered now, but all other matters are reserved for future approval. I have determined the appeal on that basis, notwithstanding the indicative parameters of scale and the indicative siting of a building included in the Design and Access Statement and the plan at its Appendix A.
3. The appellant's submitted unilateral undertaking contains planning obligations to address the Council's first and second refusal reasons, relating to contributions towards local infrastructure and to the Thames Basin Heaths Special Protection Area (TBHSPA) respectively. The Council has provided written confirmation to the effect that the undertaking addresses these refusal reasons. Even so, if I am to take it into account, I must consider whether the obligations meet the necessary tests<sup>1</sup>: I deal with this under the heading of 'Other matters'.
4. An application for costs, made by the Council against the appellant, is the subject of a separate decision.

### **Main Issues**

5. As the appeal site is in the Metropolitan Green Belt, the first main issue is whether or not the proposal would be inappropriate development in the Green Belt, for the purposes of development plan policy and the *National Planning Policy Framework*. If it is, then the second main issue is whether there are other considerations sufficient to clearly outweigh the harm arising from inappropriateness and any other harm, thereby amounting to the very special circumstances needed to justify the development.

### **Reasons**

#### *Whether or not inappropriate development in the Green Belt*

6. The development plan in this case is the Council's 'Core Strategy & Development Management Policies 2011-2028' (CS), adopted in February 2012, but the Council's third refusal reason cites paragraph 89 of the more recent *National Planning Policy Framework* and does not cite any CS policy. Extracts from the CS Proposals Map together with the Council's representations

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<sup>1</sup> That is, the statutory tests in Regulation 122 of the *Community Infrastructure Levy (CIL) Regulations 2010* and similar tests in paragraph 204 of the *National Planning Policy Framework*

- do however establish two matters. Firstly, the village of Chobham is washed over by the Green Belt and, secondly, a defined development boundary for the village is identified on the Proposals Map. The representations do not, however, include any explanation of the purpose of the village boundary.
7. The appeal site is outside the defined village boundary, but is part of the continuous residential development that extends for a short distance beyond it. No. 1 is a corner property at The Avenue's junction with Mincing Lane. As the appeal site is currently garden land, it does not fall within the *Framework's* definition of previously developed land.
  8. Policy guidance in the *Framework* is a key material consideration in this case. It establishes that the construction of new buildings is inappropriate development in the Green Belt unless it is development falling within one of the various categories listed as exceptions. One such category is limited infilling in villages<sup>2</sup>. The Council maintains that, because the site is outside the village boundary as defined on the Proposals Map, the proposed house would not fall within this category, and would therefore be inappropriate development in the Green Belt.
  9. The appellant points out that there is no reference in paragraph 89 to a local plan, its designation of settlements or settlement boundaries. The second phrase in bullet point 5 is 'and limited affordable housing for local community needs under policies set out in the Local Plan'. Given the punctuation, I find the appellant's point that the reference to policies in the Local Plan relates only to affordable housing, and not to infilling, to be a logical one. Even if that is not what is intended, in this instance the Council has not cited any development plan policy setting out its approach to infilling in villages.
  10. Moreover, as I understand it, the main purpose of a proposals map is to identify development allocations and areas to which particular plan policies apply. The village boundary on the CS Proposals Map does not have a policy status of policy, independent of specific CS policies. Although the Council maintains there is a clear distinction in planning policy between "the washed over Village Settlement of Chobham and the Green Belt of Chobham", it has not provided any details of the planning policy which supports this assertion.
  11. I therefore find it appropriate to take 'limited infilling in villages' in paragraph 89 of the *Framework* at face value. I shall assess firstly whether or not the appeal site is part of the village for the purposes of Green Belt policy and, secondly, whether or not the appeal proposal amounts to infilling.
  12. On the first matter, there is housing to both sides of Mincing Lane to a point just north of its junction with Medhurst Close (on its west side) which is all inside the village boundary. A short distance north of the boundary is the junction with The Avenue, beyond which there are only a few houses on the west side of the Lane. On the east side however there is continuous frontage housing and a footway along Mincing Lane as far as The Avenue. The housing, but not the footway, extends for some distance beyond the junction. The Avenue itself is an L-shaped cul-de-sac off the east side of Mincing Lane, with housing along both sides of it, which wraps around the Mincing Lane properties. Taking account of all these factors, especially the continuity of the residential

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<sup>2</sup> At bullet point 5 in paragraph 89 of the *Framework*

development, I conclude the appeal site is in the village of Chobham for the purposes of *Framework* paragraph 89.

13. With regard to infilling, a commonly used definition of this is small-scale development that fills a gap in an otherwise built up frontage. In the absence of any more compelling alternative, I find it appropriate to rely on that definition in this case. On that basis, the appeal site does constitute a gap between no. 1 and no. 5 The Avenue (irrespective of how the gap came into being). The proposal would therefore fall within the category of 'limited infilling in villages' in *Framework* paragraph 89. Consequently I conclude the proposal would not be inappropriate development in the Green Belt. There is therefore no need to consider whether there are other considerations amounting to very special circumstances.

#### *Other matters*

14. In building on the currently undeveloped appeal site the proposal would diminish the Green Belt's openness to some extent. However, having regard to the relatively enclosed nature of the site, and its position amongst other residential properties, I find that there would be no significant harm to the Green Belt's openness.
15. With regard to the reference in the Council's refusal reason to the character of the Green Belt, it is worth noting that the aim of Green Belt policy and its purposes are the key considerations, rather than its 'character' in a general sense. Paragraph 86 of the *Framework* clarifies that a village should be included in the Green Belt if its 'open character' makes an important contribution to the Green Belt's openness but, if the village's character needs to be protected for other reasons, other means should be used and it should be excluded from the Green Belt. In this instance the appeal site is in a pleasant residential road, typical of many suburban edge-of-settlement areas. The road has a reasonably spacious character, but not to an extent that amounts to an open character contributing to the Green Belt's openness. Moreover, the proposal would not conflict with any of the Green Belt's five purposes.
16. The indicative siting on the plan appended to the appellant's design and access statement shows a building filling a larger proportion of the plot width than is generally typical in The Avenue. Such a building, if of a uniform two storey height throughout, could potentially be harmful to the street scene's spacious character. However a building design incorporating elements of differing heights would not necessarily cause such harm. In any event, and for the avoidance of any doubt, the siting and parameters of scale in the design and access statement are not part of the application proposal. Thus I find no compelling grounds to conclude at this outline stage that the proposed dwelling would harm the character and appearance of the street scene.
17. Similarly, concerns about the proposal's impacts on living conditions at neighbouring properties, most notably on light to and outlook from living accommodation on the western side of no. 5, cannot be assessed at this outline stage with any degree of certainty. However I find no reason to conclude that designing a dwelling in such a way as to maintain a good standard of amenity for neighbouring occupiers would be especially problematic.
18. Various other matters have been raised in the appeal representations. In particular I note those relating to the redevelopment of no. 1, the creation of

the appeal site plot and a restrictive covenant. The covenant is a private matter between the parties concerned, and not a material planning consideration. However, bearing in mind that a previous attempt to set it aside was unsuccessful, it is a matter that the appellant or any subsequent owner of the land would need to address.

19. As noted at the outset, the appellant has provided a completed unilateral undertaking containing various planning obligations. Those relating to the TBHSPA are necessary to make the appeal proposal acceptable in planning terms; to ensure the additional dwelling in combination with other plans and projects would not be likely to have a significant effect on the TBHSPA; to accord with CS Policy CP14 and with the TBHSPA Avoidance Strategy Supplementary Planning Document (SPD). The other obligations relate to contributions towards education, transport, playspace, sports and community facilities, and waste and recycling. Having regard to CS Policy CP12, the associated SPD and supplementary information from the Council about the need for these contributions, I am satisfied that they meet the requisite tests<sup>3</sup>. I have therefore taken the obligations into account in reaching my decision.

#### *Conclusions and conditions*

20. I have had regard to all other matters raised, but have found nothing sufficient to alter or outweigh my overall conclusions that the proposal would not be inappropriate development in the Green Belt and that it would not be unacceptable in other respects. There would therefore be no conflict with relevant development plan policies or the *Framework*. It follows that the appeal should succeed and planning permission should be granted subject to conditions. Given these conclusions I have not considered in detail the appellant's points relating to the Borough's housing land supply position.
21. With regard to conditions, landscaping is a reserved matter so there is no need for a separate condition duplicating this requirement. Details of items such as hard-surfacing materials could be required as part of the 'appearance' reserved matter. It is however reasonable to specify particular items to be included in the reserved matters. In this case, given the positions of nearby trees and hedges around the site perimeter, details of these and of measures for their protection during the construction period could be required as part of the landscaping details, rather than in the form of an arboricultural method statement as suggested by the Council.
22. Given the nature of The Avenue it is reasonable and necessary to require a construction method statement to minimise, during the construction period, any adverse effects in terms of highway safety and residential amenity. Requiring details of finished levels is reasonable in the interests of residential amenity. A condition requiring a surface water drainage scheme is justified to ensure adequate provisions are made in this respect.

*Jane Miles*

INSPECTOR

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<sup>3</sup> Given that the Council has accepted the undertaking, I make no comment on the appellant's concerns about the Council's approach to securing these contributions, or related matters such as monitoring and legal fees. It is however important to note that, bearing in mind that each separate contribution should be assessed against the requisite tests, simply specifying a single composite figure (the infrastructure contribution) is not helpful