

Appeal Decision

Inquiry held on 23, 24 and 25 May 2017

Site visit made on 25 May 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 26/06/2017

Appeal Ref: APP/C3620/W/16/3155493

Stane Gate, Stane Street, Ockley, Surrey RH5 5TP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Copperwood Developments (Mr Roger Mustoe) against the decision of Mole Valley District Council.
 - The application Ref MO/2016/0177/PLA, dated 29 January 2016, was refused by notice dated 23 May 2016.
 - The development proposed is the erection of 7no new dwellings with associated access, car parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's submissions included two additional drawings (1615_31 Rev B and 1615_40). These drawings are illustrative only and do not alter the scheme determined by the Council. I have, therefore, taken them into account.
3. The fourth reason for refusal in the decision notice relates to the absence of a contribution towards affordable housing. That matter has been addressed to the Council's satisfaction through the provision of a completed Unilateral Undertaking (UU). I have framed the main issues accordingly. Nevertheless, I need to be satisfied that the UU would meet the tests set out in the Planning Practice Guidance and the Community Infrastructure Levy Regulations 2010 (CIL Regs).

Main Issues

4. The main issues are:
 - the effect of the proposal on the landscape character and appearance the area which the development plan regards as a rural area and subject to policies of restraint;
 - whether the proposal would preserve or enhance the character or appearance of the Ockley Conservation Area.
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Reasons

Character and Appearance

5. Policy CS1 of the Council's Core Strategy 2009 (CS) sets out the spatial strategy for development in the District. Ockley is defined as a smaller rural village for the purposes of the policy where development will be restricted to infilling on previously developed land. Policy CS2 makes provision for 3760 dwellings throughout the District in the period 2006 to 2026, including infilling in Ockley. In rural areas not covered by the Green Belt and outside of Ockley (as defined by the settlement boundaries identified on the proposals map), Policies ENV3 and RUD3 of the Council's Local Plan 2000 (LP) seeks to protect the countryside for its own sake and presume against development affecting its open character. The appeal site comprises undeveloped land which abuts, but sits outside of, the settlement boundary.
6. The site is also within an Area of Great Landscape Value where CS Policy CS13 requires new development to respect and, where appropriate, enhance landscape character and distinctiveness. This policy is not cited in the reasons for refusal and the Council does not allege conflict with it. North and west of Ockley higher ground, including Leith Hill, falls within the Surrey Hills Area of Outstanding Natural Beauty (AONB), although the reasons for refusal do not allege harm to the setting of this designation. However, it is common ground that, by virtue of its location, the proposal is in conflict with CS Policies CS1, CS2 and LP Policy ENV3. It is also common ground that the Council cannot demonstrate a five year supply of housing land. I deal with the weight to be attached to those policies in these circumstances in the Planning Balance below.
7. The effect of the proposal on the landscape character and appearance of the area overlaps with its effect on the Conservation Area. In this section I deal with the broad landscape and visual effects of the proposal having regard to the findings of the Landscape Appraisal (LA) prepared on behalf of the appellant¹ and the Landscape and Visual Impact Assessment (LVIA) prepared on behalf of the Council².
8. Ockley falls within the Wooded Weald Landscape Character Area (LCA)³ whose features include farmland in small fields enclosed by woodland, distinctive villages centred on greens and the Leith Hill as an important backdrop.
9. The site takes in land to the side and rear of Stane Gate, a substantial detached dwelling which fronts onto Stane Street, as well as land to the rear of Maple Cottage. It is divided in two by a close boarded fence and planting. The area closest to the road is separated from the adjoining dwellings by fencing and planting. It is rough mown and, whilst there is no evidence of it having been used to graze animals, it has more of the character of a small paddock than part of a domestic curtilage. Apart from a small section of the garden of Stane Gate, the area to the rear comprises rough grassland enclosed by planting. Its prevailing character is, therefore, also that of a paddock.
10. The land immediately to the west of the site is open and has a countryside character comprised of small fields interspersed with blocks of woodland.

¹ Appendix 2 of Mr Withycombe's proof

² Appendices 0 and 1 of Mr Harper's proof

³ As defined in the Council's Landscape Supplementary Planning Guidance 2013

When the trees on the site are in full leaf, they prevent views from Stane Street through to the more distant AONB, although the photographs in the LVIA suggest that glimpses of the higher ground are available during the winter months (for example LVIA Viewpoint (VP)7). Views to the AONB over the trees on, and the buildings around, the site also are available from Cricketers Lane (VP3). Consequently, although the extent of the direct visual link with the more distant AONB is restricted in time and location, the site's landscape character does help to draw the countryside immediately to the west through to Stane Street. In this way, it links this part of Ockley with a number of the defining features of the LCA and the rural setting of the village.

11. To the south of the site, Stane Gate and the adjoining Carpoles Cottages, although set behind planted front gardens, have a distinct presence in views along Stane Street. By contrast, Maple Cottage to the north is, other than in close range views directly opposite the property, screened in views from Stane Street to a far greater extent by substantial planting. The Tuns which sits close to the corner of Stane Street and School Lane is not seen in views from the south. From the north it is seen as one of a loose collection of buildings around the edge of the Green and which is separated from Stane Gate and the more consolidated built up area to the south by the appeal site and the planting around Maple Cottage. As such, the general impression is of significant built development on the west side of the road petering out north of Stane Gate. By virtue of its openness and absence of built development, the appeal site contributes to this impression.
12. A long wall on the east side of Stane Street stretches north beyond the appeal site to the junction with Friday Street. However, notwithstanding the Prideaux Gardens development which sits behind the wall close to the junction, the wall largely encloses open land and, to my mind, is not seen as a continuation of the built up area of the village. The openness of the land behind the wall is apparent in medium range views from the east (footpath 161, VP9). In this view the appeal site appears as a wooded gap to the north of Stane Gate. The Prideaux Gardens development is set back from the wall and has a limited presence in the views along Stane Street, although I recognise that it is more prominent from VP9. For these reasons I find that the appeal site has a semi-rural character which contributes positively to the transition from built up area to countryside.
13. The appeal proposal includes a pair of semi-detached dwellings fronting onto Stane Street (plots 1 and 2) together with a further pair of semi-detached houses (plots 3 and 4) and three detached houses to the rear (plots 5 to 7). A new access would pass through the 14m wide gap between Stane Gate and plot 1. Whilst I recognise that this gap is reasonably generous and not out of keeping with the spacing of properties further south along Stane Street, the new access would, itself, be an urbanising feature. Together with plots 1 and 2, it would extend prominent built development further north and result in a significant loss of the openness and semi-rural character of the site which I have found contributes positively to local distinctiveness. That the planting around Maple Cottage and the Tuns would restrict, if not eliminate, views of the proposal from the Green would not overcome this impact.
14. The site falls considerably to the rear and this would help to reduce the prominence of plots 3 to 7 in views from Stane Street and Cricketers Lane. The proposal would also retain much of the planting which separates the front

and rear parts of the site, as well as the planting around the rear paddock. Nevertheless, the new drive would allow views of the rear part of the site from Stane Street and the presence of built development would be apparent. As such, the proposal would substantially undermine the role which the site currently plays in connecting the countryside with this stretch of Stane Street.

15. The landscape witnesses differed in their opinions of the sensitivity of a number of the visual receptors. With the exception of Cricketers Lane, the viewpoints I have identified are variously within a Conservation Area, an Area of Great Landscape Value and from a public footpath. As such, and notwithstanding that more people are likely to experience the Stane Street views as drivers than as pedestrians, I consider that the sensitivity of the receptors is generally high.
16. Therefore, I conclude that the proposal would have a harmful effect on the landscape and visual character of the appeal site. As well as the location of the development being contrary to CS Policies CS1 and CS2, this finding heightens the extent to which the proposal conflicts with LP Policy ENV3.

Conservation Area

17. The Council has not produced a Conservation Area Appraisal for Ockley. However, my attention was drawn to a description of the designated Area at Appendix 6 of the LP, an earlier description produced by Surrey County Council⁴ and the entry for Ockley in Pevsner's Surrey 'Buildings of England' series⁵. Whilst the appellant's heritage evidence describes the Conservation Area according to the distinct characters of defined quarters of the settlement, there was general agreement that the documentary descriptions provide a reasonable starting point for establishing the significance of the heritage asset. Common themes in these documents which denote significance include the essentially linear form of the settlement along Stane Street, the importance of the extensive elongated Green to the north of School Lane and the existence of gaps in the built form which provide linkages between the settlement and the surrounding countryside.
18. Residential developments, including those at the former Kings Arms public house, Wheelwright Court, Prideaux Gardens and New Cottage have taken place within the Conservation Area since those documents were published. Although they have led to localised change, they have not materially altered the characteristics which give the Area its significance.
19. There are no specific references to the appeal site or its immediate surroundings in the documentary descriptions. Nevertheless, LP Appendix 6 does refer to a change to a 'closer-knit feel' and 'more mixed architectural character' to the south of the Green. The appellant argues that this change occurs in the vicinity of School Lane and, therefore, that the appeal site falls within the closer-knit area. For the reasons set out above, I consider that the transition takes place further south than School Lane and that the appeal site, as well as Maple Cottage and the Tuns, have a greater affinity with more open and loose-knit northern part of the settlement.

⁴ 6th Edition of the Antiquities and Conservation Areas of Surrey, reproduced at Appendix 4 of Dr Barker-Mills' proof

⁵ Extract at Inquiry Document 8

20. Following the identification of the change in character south of the Green, Appendix 6 goes on to refer to 'Gaps in the frontage and views out into the countryside' being reminders of Ockley's rural setting. Whether or not this reference is intended to apply specifically to the closer-knit area south of the Green, the notion of gaps in built form providing links to the countryside recurs consistently in the documentary descriptions. Considering the designated Area as a whole, it is appropriate to recognise that some gaps are greater in size, and some views are more extensive than others and, therefore, contribute more to the significance of the heritage asset.
21. Compared with, for example, the gaps between the buildings around the Green or the views to the countryside further south on the east side of Stane Street, the linkage to the countryside offered by the appeal site is more modest. Nevertheless, I have already concluded that it contributes positively to the character and appearance of the area by drawing the adjoining countryside through to this part of Stane Street. In this way, the site also contributes to the significance of the heritage asset.
22. The proposed dwellings on plots 1 and 2, together with the new drive, would replace the essentially open and green character of the site frontage with built development. The drive would also allow views of the new dwellings on the rear part of the site, notwithstanding that they would be at a lower level than Stane Street and that most of the existing boundary planting would be retained.
23. The creation of development in depth would not be consistent with the traditionally linear pattern of built form along Stane Street. Whilst there is development to the east and south of the appeal site, the limited amount of development to the north is looser-knit and I have already found that this area is more rural in character. The land to the west of the site is free of significant built development.
24. I recognise that the proposal seeks to create an informal, clustered, layout on the rear part of the site with the development having a vernacular or agricultural appearance. Nevertheless, the five buildings proposed on this part of the site, together with the access, parking and boundary enclosures, would have a substantially urbanising effect on the site and would lead to an unwelcome consolidation of the pattern of development in the surrounding area. Therefore, irrespective of whether the layout and appearance of the development would be appropriate, the introduction of built form at the scale and location proposed would result in the loss of openness and linkage to the countryside and consequential harm to the character and appearance of the Conservation Area.
25. Some recent developments, including those at the Kings Arms and Wheelwright Court, are arranged in clusters which give depth to the built form. However, even if I were to accept that those developments have not been harmful to the Conservation Area, considered cumulatively, they have not materially altered its character as a whole and do not affect the immediate vicinity of the appeal site. Consequently, I consider that they do not provide a robust justification for the appeal proposal.

26. In reaching this conclusion I have had regard to the appeal decisions for the Kings Arms development⁶. In that case the Inspector found that that the open land of the rear of the site was not a significant feature in the Conservation Area and that the proposed development would sit comfortably within a clearly defined cluster of development. The rear part of the site, whilst open, had also previously been used as hardstanding. Moreover, the Inspector gave weight to the benefit of the proposal in reducing the disruption to the listed Kings Arm building compared with an earlier approved scheme. As such, I consider that the current and Kings Arms proposals are readily distinguishable.
27. Reference has also been made to the approval of an affordable housing scheme adjacent to the Village Hall⁷. However, that scheme was found to harm the Conservation Area and was approved on the basis that the harm would be overcome by the benefits of providing the affordable housing. No on-site affordable housing is proposed in this case and, in any event, the permission has lapsed. Consequently, I give that permission negligible weight.
28. Overall therefore, I find that the proposal would not preserve or enhance the character and appearance of the Conservation Area. As such, it would be contrary to CS Policy CS14 and LP Policy ENV39. The appellant's planning witness accepted that these policies are consistent with the National Planning Policy Framework (the Framework) and should be accorded full weight, irrespective of the housing land supply position in the District. Together, the policies require development to preserve or enhance the character or appearance of Conservation Areas, by, amongst other things reflecting local historic character, settlement form and retaining significant spaces. Nor would the proposal comply with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas, or Framework paragraph 131, which has similar aims.
29. Framework paragraph 132 states that, when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the conservation of the asset. Paragraph 134 advises that where, as in this case, a proposal would lead to less than substantial harm, that harm should be weighed against the public benefits of the proposal. I consider this matter in the Planning Balance below.

Other Matters

30. There have been five earlier proposals⁸ for residential development on the front part of the appeal site. One was withdrawn and the others were refused by the Council. One was also dismissed at appeal⁹. I recognise that distinctions can be made between the current scheme and the earlier proposals with regard to the layout, scale, siting and appearance of the developments. I also note that one of the applications was recommended for approval by Council officers. Nevertheless, the decisions show a consistent concern on the part of decision makers that residential development of the site would result in the loss of a space which contributes positively to the significance of the Conservation Area. Consequently, even allowing for changes to the policy context and the nature

⁶ Appeal references APP/C3620/W/14/3000060 and APP/C3620/Y/14/3000067

⁷ Application reference MO/2013/0322

⁸ Application references MO/97/1690, MO/87/1289, MO/85/0107, MO/85/0784 and MO/84/1352

⁹ Appeal reference T/APP/C3620/A/86/43360/P4

of the schemes under consideration, the site's planning history does not weigh in favour of the proposal.

31. Maple Cottage and the Tuns are listed buildings. However, they are effectively screened from the appeal site by substantial vegetation and there is no substantive evidence to suggest that the proposal would be harmful to their settings.
32. I have had regard to the other concerns expressed locally, but none has led me to a different overall conclusion.

Unilateral Undertaking

33. Regulation 122 of the CIL Regs states that a planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind.
34. Policy CS4 of the CS seeks to increase the provision of affordable housing in the District and requires, subject to viability, developments of 1 to 9 dwellings to make a financial contribution equivalent to providing 20% of the total number of dwellings as affordable. The Council's Affordable Housing Supplementary Planning Document 2010 (SPD) set out the basis for calculating the financial contribution; it amounts to £149,564 for the appeal proposal and would be secured through an obligation in the UU. There is nothing to suggest the provision of this contribution would render the appeal scheme unviable.
35. The appeal site is within a designated rural area for the purposes of Section 157 of the Housing Act 1985. Consequentially, the threshold below which national policy¹⁰ states that affordable housing contributions should not be sought can be reduced from 10 to 6 units. As such, I am satisfied that the obligation is necessary, relevant and reasonably related in scale and kind to the proposed development. I have, therefore, taken the UU into account. It would overcome the fourth reason for refusal and ensure that the proposal would comply with CS Policy CS4 and the SPD.

Planning Balance and Conclusion

36. The Council accepts that it cannot demonstrate a five year supply of housing land. Its Position Statement¹¹ puts the figure at 2.76 years for the period 2016 to 2021. This is based on adding a 5% buffer to the objectively assess housing need (OAHN) set out in the 2016 Strategic Housing Market Assessment and equates to shortfall of 948 units. As such, Framework paragraphs 14 and 49 are engaged and relevant policies for the supply of housing should be considered out of date. It is common ground that CS Policy CS2 is relevant to the supply of housing. Although the Council considers that CS Policy CS1 and LP Policy ENV3 are not such policies, case law indicates the important question is whether the policies in the plan are achieving a 5 year supply in accordance with the objectives of Framework¹².

¹⁰ Written Ministerial Statement dated 28 November 2014 and paragraph 23b-031-20161116 of the Planning Practice Guidance (PPG)

¹¹ Core Document C6

¹² Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017]

37. The OAHN has not been tested through a Local Plan examination and the Council argues that the District is tightly constrained by Green Belt and AONB designations. It estimates that only some 5% of land outside of built up areas is unconstrained by restrictive policies of the type set out in Footnote 9 to Framework paragraph 14. Once the relevant policies are applied, it considers that the final housing target will be reduced considerably. The weight to be attached to the OAHN figure should take into account these circumstances¹³
38. The appellant argues that adjoining local planning authority areas are also constrained and are experiencing shortfalls in housing land supply. The statutory duty to co-operate in plan-making may, therefore, increase the amount of housing Mole Valley District is required to supply.
39. Neither party has quantified the extent to which the OAHN may need to be adjusted and it is not for the decision maker in Section 78 appeals to undertake that exercise¹⁴. Nevertheless, it seems to me that the 'policy on' housing figure is likely to be materially less than the OAHN figure. This would reduce the extent of the shortfall and, therefore, the weight to be attached to the OAHN figure.
40. Policies CS1 and CS2 seek to direct development to previously developed land in sustainable locations and to restrict development in locations where access to local services and facilities is limited. Policy ENV3 seeks to protect the countryside for its own sake. To that extent, the underlying objectives of the policies are consistent with Framework paragraph 17. Nevertheless Policy CS2 and paragraph 2 of Policy CS1 do seek to limit development in specified locations and, in so doing may restrict the supply of housing. In accordance with Framework paragraph 215 therefore, and having regard to my findings on the OAHN, I give Policies CS1 and CS2 moderate weight and ENV3 considerable weight.
41. The appellant's planning witness argued that the settlement boundary either exists or does not exist and, since it is derived from out of date policies, the boundary should be given no weight. However, having regard to recent case law¹², it seems to me that the substantive point is the consequences which flow from the policies rather than attempting an overly forensic examination of their constituent parts. I have found that the proposal would result in harm to the character and appearance of the area, that it would lead to substantial conflict with LP Policy ENV3 in particular, and that considerable weight can be given to that policy.
42. Furthermore, the proposal would not preserve or enhance the Conservation Area. The latter consideration should be accorded great weight and is underpinned by development plan policies which carry full weight. However, since the harm to the Conservation Area would be less than substantial it is also necessary to weigh it against the public benefits of the proposal. Such benefits could be anything that delivers social, economic or environmental progress as described in Framework paragraph 7.
43. The proposal would provide only seven housing units. This would be a modest contribution to the housing needs of the District as a whole. Although there would be a range of dwelling from two to five bedrooms in size, CS Policy CS3

¹³ PPG paragraph 3-030-20140306

¹⁴ Hunston v SS CLG [2013] EWCA Civ 1610

requires development to reflect local housing needs and expresses a preference for two and three bedroom dwellings. There is no substantive evidence to show that the proposed mix reflects local needs. The appellant's planning witness accepted that the financial contribution to affordable housing should carry less weight than on-site provision. Therefore, notwithstanding that Framework paragraph 47 seeks to significantly boost the supply of housing and paragraph 50 seeks a wide choice of high quality homes, I find that the proposed housing would make only a limited contribution to the social role of sustainability.

44. Whilst it was suggested that local sports and social organisations are struggling to attract members, given the number of dwelling proposed, I am not persuaded that the future occupiers would significantly improve that situation.
45. Future occupiers could be expected to make a similarly limited contribution to the viability of local services and facilities. The proposal would offer short term economic benefits through the creation of jobs during the construction phase. Overall, however, the contribution of the proposal to the economic role would be very modest.
46. My conclusions on the main issues indicate that the proposal would have negative effects on the local environment. Ockley offers a limited range of local facilities and services to meet the day to day needs of future occupiers. Services on the bus route linking Ockley with Horsham and Dorking are infrequent and their timing does not appear to be conducive to, for example, travel to work. Nor would the demand responsive bus service appear to be well suited to this task. The rail station is some 1.7 miles from the site and, therefore, unlikely to be attractive for regular trips on foot. As such, I consider that the site's location would not promote sustainable travel choices and the site would have a negative effect on the environmental role of sustainability.
47. Overall therefore, I find that the harm to the Conservation Area would not be outweighed by the public benefits of the proposal. As such, it would not amount to sustainable development. Since the harm to the Conservation Area is a restrictive policy for the purposes of Footnote 9 to Framework paragraph 14, it is not necessary to consider the tilted presumption in favour of sustainable development.
48. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR

Appearances

FOR THE COUNCIL

Thomas Cosgrove of Queen's Counsel, instructed by the Council's Head of Legal Services

He called

Nicholas Harper BA DipLA CMLI Harper Landscape Architecture LLP

Dr Nigel Barker-Mills
BA(Hons) Dip Bldngs Cons
AA IHBC FSA

Ian Phillips BA(Hons) MRTPI Cunnane Town Planning LLP

FOR THE APPELLANT

Richard Wald of Counsel, instructed by Andrew Black of PRP

He called

Ian Davis BA(Arch) MRIBA Lytle Associates, Architects

David Withycombe MSc, CMLI, MLI Land Management Services Ltd

Gregory Beale MSc Planning Heritage Limited
BA(Hons) DipTP IHBC MRTPI

Andrew Black MRICS MRTPI PRP Planning

Documents Submitted at the Inquiry

- 1 Lytle Associates drawing 1615_Stane Gate – Viewpoint 3
- 2 Lytle Associates drawing 1615_Stane Gate – Viewpoint 9
- 3 Email from Aiden Gardner dated 27 July 2015
- 4 Council's opening statement
- 5 Extract from Mole Valley Local Plan – Policy RUD3 and supporting text
- 6 Three emails from Aiden Gardner, undated and dated 28 and 27 July 2015
- 7 Information on Mole Valley Villager bus services
- 8 Extract from Pevsner's 'Buildings of England' for Ockley
- 9 Closing submissions on behalf of the Council
- 10 Closing submissions on behalf of the appellant