



Appeal Decision

Inquiry held online on 16-18 April and 23 April 2024

Site visit made on 19 April

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th May 2024

Appeal Ref: APP/K3605/W/23/3334391

Land north of Raleigh Drive, Claygate, Esher, Surrey

- 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 Claygate House Investments Ltd and MJS Investments Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2023/0962, dated 24 March 2023, was refused by notice dated 22 September 2023.
 - The development proposed is an outline planning application for up to 60 dwellings, associated landscaping and open space with access from Raleigh Drive.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application submitted was in outline form, with all matters reserved for future consideration, except for the means of access from Raleigh Drive. Access details do not, however, extend across the whole site. They are limited to the junction of Raleigh Drive, Rythe Road, and Loseberry Road and a short section into the site. My consideration of access details is limited to these matters.
3. An illustrative masterplan, proposed parameters plan, illustrative landscape strategy and sketch elevations have been submitted. They are potential ways that the site could be developed. I have considered the appeal based on the site location plan and proposed crossroads access arrangement plan.
4. Shortly after the Inquiry closed, the appellant submitted a signed and dated s106 agreement (s106 agreement). The main parties agree that the s106 agreement addresses the second, third, and fourth reasons for refusal concerning biodiversity net gain (BNG), the provision of affordable housing, off-site highway improvements and an on-site car club. The s106 agreement also contains provisions for a travel plan and monitoring arrangements. I will consider the s106 agreement later in my decision.
5. After the Inquiry closed, the appellant submitted three new documents. Two relate to the Draft Elmbridge Local Plan 2037 (eLP) and a request (and confirmation) to pause the eLP following the start of its Examination in Public (EiP). A Statement of Common Ground – Addendum relating to three appeals at St George’s Gardens was also submitted. This document was agreed and signed on 1 May and confirms the Council’s current supply of deliverable housing sites. Each of the three documents were not available before the Inquiry closed. As they are relevant to the consideration of this appeal, I sought the parties’ comments on them, and I have taken them into account in reaching my decision. As part of that exchange, a further document was

submitted to provide context to the Council's current housing land supply position. I have taken Appendix 1 of that document into account as it relates to the parties' points about housing land supply.

Main Issues

6. The appeal site, save for the access, comprises a privately owned grass field within the Green Belt outside of any settlement boundary. Although previously developed land (PDL) in the form of a tennis court and bowling green, among other things, form part of the site, its extent is far greater and most of the land is not PDL. Given this and the development proposed, it is common ground that the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework).
7. Consequently, the main issues in this case are:
 - (a) whether the proposal would accord with the spatial strategy of the development plan;
 - (b) the effect of the proposal on the openness of the Green Belt, and the purposes of including the land within it;
 - (c) whether the Council can demonstrate a four-year supply of deliverable housing sites;
 - (e) whether the proposal would make adequate provision for affordable housing, biodiversity net gain, highway improvement schemes and a car club; and
 - (f) whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

The appeal site

8. The appeal site is a non-agricultural grass field roughly 2.2 hectares in size that was once associated with offices at Claygate House, which are in the process of being converted/redeveloped into residential apartments (Esher Park Gardens and Oaklands Park). Along with the PDL referred to, the site also includes mounding relating to the site's former pitch and putt golf course.
9. Residential development bounds the appeal site on three sides, with two to two and a half storey development on Raleigh Drive to the south and Rythe Road to the east and the four storey Esher Park Gardens/Oaklands Park off Littleworth Road to the west. The site's northern boundary is defined by mature hedgerow and trees. Beyond here are fields that give way to mature woodland beyond Littleworth Road, which extends up to Hinchley Wood. The site's western boundary comprises a tall, close-boarded fence. Landscaping will be planted behind the fence in the adjoining site. The southern and eastern boundaries comprise of a band of trees, shrubs, and hedgerow that screen the site / residential dwellings and their long rear gardens beyond to varying degrees.
10. The site is in the parish boundary of Claygate but next to Esher. Claygate village centre is around 600 metres to the south-east. Esher Town Centre is about 0.9 miles to the north-west. Both are accessible using different transport modes and offer a range of facilities and services. Claygate railway station is a short walk away. Regular services are available between London and Guildford.

Spatial strategy

11. Policies CS1, CS2 and CS11 of the Elmbridge Core Strategy (CS) outline the borough's spatial strategy. Jointly, these policies, among other things, set out that the borough's green infrastructure network, including the Green Belt and other open spaces within the urban area, will continue to be a key determinant in shaping settlements and development patterns in the future. New development will be directed towards PDL within existing built-up areas, with town and village centres continuing to be the focus for new development. In Elmbridge, the Green Belt covers around 57% of the borough. The extent of this relates to virtually all the land outside of the built-up areas.
12. CS Policy CS 2 sets out the approximate number of net additional dwellings that will be provided for in the borough during the plan period of 2011 and 2026. This is to be achieved by encouraging housing development on PDL within the urban area, promoting the development of existing allocations, making effective use of existing buildings and urban land, redeveloping existing areas of poor-quality housing, and supporting the redevelopment of employment land for mixed-use developments that include housing.
13. Although the site lies within the parish boundary of Claygate, it is outside of the built-up area despite being next to it. Therefore, when CS Policies CS2 and CS11 are read alongside CS Policy CS1, the delivery of housing on the appeal site would not accord with the spatial strategy for new development.
14. Nonetheless, the CS was adopted before the first publication of the Framework in 2012, which introduced a shift in approach to boost significantly the supply of housing so that each Local Plan meet the full, objectively assessed need (OAN) for market and affordable housing in the housing market area, subject to being consistent with the policies in that version of the Framework. It meant that the OAN needed to be determined before consideration could be given to whether those needs could be met in line with the Framework. Therefore, the CS's strategy to deliver housing did not follow the Framework's approach. The Development Management Plan (DMP) did not also review the CS's spatial strategy, and the CS has not been reviewed since it was adopted.
15. Hence, the housing target in CS Policy CS2 of 225 net dwellings per annum (dpa) during the plan period is only around a third of the 650 dpa (OAN) that is derived from the standard method. In all, the housing delivery target found in the CS is considerably out of date and does not reflect the current need. There has also not been a review of whether the borough's needs have or are being met, and whether the spatial strategy set by the CS responds to that. I am mindful that the eLP is currently being EiP, and the Examining Inspector will consider what the appropriate strategy and housing requirement are for the borough. Currently, the eLP is proposing to underdeliver the borough's OAN by 30% by maximising the use of brownfield land and not to release any Green Belt land. In doing so, the Council recognises that the OAN in respect of market and affordable homes cannot be met¹.
16. The eLP is also at an early stage in its EiP and is currently paused. There are unresolved objections to its policies and strategy to meeting the borough's housing needs. As such, it currently carries limited weight, and it is unclear if the approach to development in the borough will be a sound one. In any event, the Council, on its own case, cannot demonstrate a four-year supply of

¹ CDE.14, Paragraph 3.58 and CDE.16, Paragraph 3.29

deliverable housing sites without relying on Green Belt sites. As such, despite the proposal's conflict with CS Policies CS1, CS2 and CS11, the spatial strategy set by these policies provides a significant constraint on development and affects the borough's ability to meet its housing needs. The spatial strategy is not consistent with any version of the Framework in delivering housing needs. In this context, I conclude limited harm would arise from the proposal's conflict with the spatial strategy, and given that these policies are out-of-date, they carry limited weight.

eLP evidence base

17. As part of that evidence base for the eLP, Arup and Partners Ltd were appointed to carry out a Green Belt Boundary Review (GBBR). They subsequently undertook a Green Belt Boundary Review – Supplementary Work (GBBRSW). For contextual purposes, further work undertaken by the Council has seen the appeal site considered to have potential for release from the Green Belt before a decision was taken by the Council not to propose any changes to the Green Belt boundaries in the eLP. The Council's more recent assessments relate to the 'exceptional circumstance' test which is less demanding than the 'very special circumstances' test I am focused on².
18. The GBBR and GBBRSW provide site-specific analysis, which is relevant to this appeal. In the GBBR the appeal site fell within the southernmost part of Local Area 45 which extends northwards and along the western edge of Hinchley Wood. Local Area 45 was found to perform strongly against the first three Green Belt purposes. In the GBBRSW Local Area 45 was split into four sub-areas. The appeal site formed most of sub area 59 (SA-59), with the land immediately to the north of the site forming sub-area 60 (SA-60). The remaining sub-areas are SA-63 and SA-64.
19. The GBBRSW assessed SA-59 against the first three Green Belt purposes. It described SA-59 as not lying on the edge of a large built-up area (scored 0/5) and scored 1/5 for the second and third purposes. It concluded that "*the sub-area plays a lesser role in the context of the wider Green Belt and, as a result of its self-containment and severance from the Green Belt further north, would not affect the performance of surrounding Green Belt sub-areas or the wider Local Area.*" Conversely, SA-60 performed differently with higher scores against each of the first three purposes. SA-60 was found to play "*a critical role in the context of the wider Green Belt, maintaining the physical and visual separation between Esher and Claygate, and Greater London, at both a local and strategic level. The loss of this sub-area would compromise the ability of surrounding Green Belt to prevent settlements from merging and preventing sprawl.*"
20. While I have had regard to the evidence base for the eLP, the question of its soundness is for the EiP, and I have used my own professional judgement in assessing the appeal proposal, taking into account current circumstances.

Purposes

21. CS Policy CS1 states that Claygate is a large village rather than a suburban area. Esher is a district centre according to Policy CS1. The boundary of Claygate and Esher extends broadly along Littleworth Road, with the linear development alongside it. The precise boundary does not always follow the road, as the boundary deviates for Hare Lane Green and the dwellings to the north of Esher Park Gardens, which lies within the parish of Claygate.

² CDG.17

22. Development along the Hare Lane and Raleigh Drive corridor means that Esher and Claygate already join. Therefore, on the ground, there is little perception that you have or are about to move between two separate settlements. The proposal would not change that relationship and would add to the current link between the two.
23. The Framework does not define what a large built-up area is, nor does the CS or the Development Management Plan (DMP). The evidence base for the eLP is predicated on the basis that 'large built-up areas' corresponds to the Tier 1 settlements (or equivalent) identified in the respective Local Plans for each local authority, both within and outside Elmbridge, to ensure a robust and evidence-based approach to the assessment.
24. Based on the settlement hierarchy in the CS, neither Esher or Claygate are large, even if they are built-up. The eLP proposes to make Esher a town centre and Claygate a district centre. Changing the latter does not mean that Claygate would become a large built-up area for the same reason that Esher is not when the CS settlement hierarchy is applied. Esher does, however, comprise of a population of around 10,000 people, and it covers an area roughly the same size as Chertsey, which is said to be a large built-up area. On that basis, the Council say that Esher is now a large built-up area, despite a contrary view being taken in its own eLP evidence base³.
25. If I were to agree with the Council's view that Esher is a large built-up area, the proposal would infill land that is joined by development within the Claygate parish boundary on three sides. That adjoining development, together with the site's northern boundary, would visually and physically contain the proposed development. Additional planting along the northern boundary would only strengthen its depth and sever the appeal site from the open land to the north. So, while the proposal would result in sprawl, it would not be unrestricted even if the development were to be judged to extend off Esher's western flank. For that reason, there would be no conflict with purpose a).
26. The wording of purpose b) in the Framework reflects that used in previous national policy. The Council considers that 'neighbouring towns' should be interpreted flexibly and should include larger settlements that may not have been formally labelled as a town. The eLP evidence base approaches the consideration of purpose b) on that basis. However, I disagree. There have been numerous revisions to national policy since 1955 and the current version of the Framework specifically uses 'city', 'town', 'village' and 'settlement' at different parts. As such, if purpose b) was to be more widely considered as the Council suggest, then it would have been written in that context. It is not.
27. While Esher is a town, Claygate is a village according to the CS and the eLP does not lead me to consider otherwise. Although the proposal would introduce development into a gap, widen the urban link between Claygate and Esher, and thus further merge the two settlements, the appeal scheme would not conflict with purpose b) as Esher and Claygate are not neighbouring towns.
28. In terms of purpose c), the development would add a considerable amount of built form to a largely greenfield site. The site's appearance has changed in recent years, and it has less urban character than it once did. Its semi-rural character is also aided by vegetated boundaries on three sides, albeit urban influences are visible, and the northern boundary does provide visual and physical containment to the countryside beyond.

³ CDE.31, Pages 35-36

29. Even though the proposal may be acceptable in ordinary landscape and visual terms, it would introduce built form of a scale and massing to the land which is beyond the settlement boundary, and result in the loss of the countryside edge to Esher and Claygate, even with the area of open space to the east. Due to the site's location, adjoining residential characteristics, and level of containment, the proposal's effect would be checked and localised with no significant encroachment into the countryside. Therefore, a limited degree of harm would be caused by the proposal's conflict with purpose c).
30. Due to existing Green Belt boundaries, development is focused and encouraged on derelict and other urban land. The release of Green Belt sites may disincentivise developers from using derelict and other urban and for development, as greenfield sites generally come with fewer constraints. This may encourage the submission of planning applications, but it does not necessarily mean that planning permission will follow as very special circumstances would need to be demonstrated in each case, and on their own merits. Hence, allowing appeal would not create a precedence.
31. To judge any effect against purpose e), one needs to consider that housing needs have not been met in the borough for some time, and the current housing need of 650dpa cannot be met in the urban area. The eLP does not propose to fully meet the OAN following a brownfield first approach. Therefore, any derelict and other urban land would be required to fulfil the eLP's approach to partially meet the borough's needs. The EiP will consider the Council's proposed strategy, but the Council could not point to any site in the urban area that would not come forward if the appeal were to be allowed. Hence, in the current context, developing the appeal site for the scale of housing proposed would not discourage the recycling of derelict and other urban land. My view here is consistent with The Old Cottage and Roundhouse Farm decisions⁴ and I find that there would be no conflict with purpose e).
32. For completeness, I agree with the main parties' view that the proposal would not conflict with the purpose d) of the Green Belt.
33. In conclusion, the proposed development would conflict with purpose c) of including the land in the Green Belt for the reasons set out. Limited harm would arise in respect of this purpose, though the proposal would conflict with Framework paragraph 143, nonetheless.

Openness

34. Openness has a visual and spatial aspect. The Framework confirms that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
35. The land comprising the appeal site has an open character, despite the PDL, though it is enclosed on each side by hard or soft landscaping. That character is not readily understood from public vantage points due to the adjoining residential development, which limits its contribution. The site's private ownership also limits its contribution to openness, but residents adjoining the site have views across the site and perceive the land as an open parcel of land free from development. Vegetation on the southern and eastern boundaries filters residents' views to varying extents. The same may happen over time on the western boundary once the landscaping, which is yet to be planted, grows.

⁴ CDH.34 and CDH.2

36. The landscaped northern boundary provides a visual barrier to the larger open tract of land to the north. However, despite the landscaping, there is an understanding that the land beyond is free from development. That would only likely be greater during the winter months.
37. The proposal would see a large amount of built form occupying a concentrated area on the western side, owing to the need to avoid developing in medium and high probability areas of flooding. It is also envisaged that the dwellings will be up to three storeys high. Although the land to the east of the site will be retained as open space, it would also have a different visual appearance and spatial function and be read as being part of a housing development on the land, not a grassed field. It would be publicly accessible.
38. The site's existing boundaries would contain the development, which would not extend beyond the existing extent of development adjoining the site. The site's northern boundary would become fuller and deeper, though I do not have the precise details of how this may be achieved. This would likely physically and visually separate the site from the land to the north, despite the continued spatial connection and Green Belt designation, thereby changing the openness of the Green Belt.
39. Even so, the proposal would result in visual and spatial harm to the openness of the Green Belt, although the site is a relative part of that. The degree of harm caused would vary in the vicinity of the site. In the short term, the greatest visual effect is likely to be from the west, but residents to the south and east would also experience visual harm to the openness of the land even with their filtered views. To a much lesser degree, visual harm would occur when the site is viewed from the north, albeit at a distance and against the backdrop of existing built form.
40. The land would not, if developed, be perceived as countryside on the edge of Esher and Claygate which extends northwards to the west of Hinchley Wood. I conclude that the proposal would result in a limited loss of openness in the Green Belt and conflict would arise with Framework paragraph 137.

Housing supply

41. Due to the submission of the eLP for EiP, Framework paragraph 226 confirms that the Council should identify a minimum of four years' of deliverable housing sites against their local housing need (LHN) instead of the five year minimum that Framework paragraph 77 requires. No adjustments to the LHN figure of 650dpa is needed to account for any prior shortfall or from the latest Housing Delivery Test (HDT) result which showed that the Council was delivering 90% of its requirement.
42. The evidence submitted prior to and during the Inquiry, confirmed the main party's disagreement on whether the Council could demonstrate the minimum four-year supply using a base date of 1 April 2023. The appellant was of the view that the Council could demonstrate a 3.51-year supply or 2,279 dwellings (-321 dwellings below the four year minimum) while the Council said it could demonstrate a 4.14 year supply or 2,693 dwellings (+93 dwellings above the four year minimum).
43. The party's dispute is split into two parts. The first concerns Sundial House and the number of dwellings that are expected to be delivered here compared to those stated in the Council's Annual Monitoring Report 2022/23 (AMR) and its Land Availability Assessment 2023 (LAA). The second part of the dispute concerns sites that were not included in the LAA, which was published on

9 February 2024 and included a list of sites forming part of the supply in the AMR, but that received planning permission relatively soon after the agreed base date and are said to have met the test of 'deliverable' as of 1 April 2023. This is because it has a base date of 31 March 2023 which reflects the agreed base period for the purposes of this appeal.

44. However, the Statement of Common Ground – Addendum for St. George's Gardens⁵ submitted after the Inquiry closed, states that the Council can demonstrate a deliverable supply of 2,360 dwellings against a five-year requirement of 3,250 dwellings (650dpa) using the LHN figure. This is a 3.63-year supply, and the Council accepts that it cannot currently demonstrate a four-year supply. The base date for this position is 1 April 2024, a year later than the base date used by the parties in this appeal. The supply is said to include different sites to those in the assessment with a base date of 1 April 2023, though the site at Brooklands College, a site disputed by the main parties, is included in the Council's latest position.
45. Evidence about housing land supply is dynamic, and the Council's latest position reflects the situation on 1 April 2024 not a year prior. Although the Council now accepts that it cannot demonstrate the minimum four-year supply, I do not have a detailed breakdown of all the sites in the Council's most recent supply to know how they compare to the evidence from the previous base period, and whether the same number of units are deliverable. That has potential implications for the supply of market and affordable housing which could in turn alter my assessment of other considerations. Furthermore, the Council's most recent supply assessment relies on the same figures from the housing trajectory for the eLP⁶. The Council now considers that trajectory to include persistent anomalies and it is working on comprehensively recasting the housing trajectory and its five-year dataset from scratch⁷. As such, this evidence is potentially subject to change.
46. Therefore, this more recent position is unclear and not supported by the depth of evidence that I have considered relating to the previous base date. It is not reliable to base conclusions on the current extent of supply without a full and accurate dataset, so I have based my decision on the evidence that I heard at the Inquiry relating to the 2023 base date.

Deliverable supply

47. The LAA identified 61 dwellings as deliverable at Sundial House. The Council says that the site can deliver 56 net dwellings based on a planning application, submitted in November 2022 for 74 units following the demolition of 18 existing units. The appellant relies on the 38 dwellings specified in the brownfield register as the planning application has yet to be determined and the Environment Agency (EA) objected to the proposal based on the flood risk assessment (FRA). However, the EA provided incorrect modelling data, and the applicant is amending the FRA and the scheme's design to ensure that it is safe from flooding for the end users. The updated information has not yet been submitted. The Council envisages being able to determine the scheme in three to six months as the planning obligation is being drafted now that agreement has been reached on viability and affordable housing. The agreement will secure twenty affordable homes, even though the evidence confirms that the scheme would be unviable if affordable housing were provided.

⁵ Post Inquiry Document 3

⁶ Post Inquiry Document 4, Appendix 1

⁷ Post Inquiry Document 1

48. The applicant is a local developer, and they have experience of developing and managing sites that provide affordable housing for the elderly. However, there is no substantive evidence about anticipated start and build-out rates. Given the lack of clear evidence in this regard, together with the current unresolved EA objection and timeframe for the Council's decision to be issued, the delivery of 38 units appears to be more realistic on this site.
49. Seven sites not included in the LAA are relied upon by the Council. It is common ground that the definition of deliverable is not a closed list, and the Woburn Sands decision⁸ confirmed that evidence can post-date the base date, where the site is considered capable of being deliverable at that point. Nevertheless, 'clear evidence' is required. That must be something more than assertion; it must be cogent. The evidence is for the Council to provide.
50. The appellant considers that seven sites have only become deliverable after the base date. They were not considered deliverable at the base date and should not be included, as without corresponding adjustments to completions, losses and where planning permission has expired, it would only distort the supply. The Council has not made those adjustments, and in effect, the supply could potentially be skewed. The Council could have published a new, comprehensive housing land supply assessment with a fresh base date but hasn't. On that basis, the seven sites should be removed from the supply.
51. However, if I am wrong in adopting this approach, which is consistent with the decision at Creech St Michael⁹, I will consider, for completeness, the merits of the seven sites. The Council was seemingly aware of developments or potential proposed developments at Members Hill, Copsem Manor, 63 Bridge Road, 142 High Street, AC Court, and 103 Ashley Road prior to the base date, though the extent of that knowledge varies. Some of these schemes were subject to pre-application discussions, a planning application, or a previous planning permission prior to the base date. Even if I were to consider that all these sites are not 'new sites', there is not enough clear evidence for their inclusion at the agreed base date. Such evidence would include matters relating to, but not limited to, the developer's delivery intentions, anticipated start and build-out rates to support their inclusion in the housing land supply total.
52. The Council was aware of the Brooklands College site when it prepared its AMR and LAA, as pre-application discussions had been held since 25 October 2021. However, the site was not considered to be deliverable at the base date, even though sites at the pre-application stage were included if deemed to be deliverable. The site is also not on the Council's brownfield register. I am unclear whether the Council knew that a planning application was to be submitted shortly after the base date. While a resolution to grant permission has been reached and the s106 has now been signed and is being executed, it is unclear when planning permission will be granted. Until then, any draft planning conditions to secure items, such as a detailed phasing plan, cannot be discharged. Despite the developer's phasing plan and email, the anticipated mid-2024 start date is not realistic. It is also unclear how many units could potentially be delivered and when, together with the number of affordable homes that the Council says will be delivered. There is further doubt due to the lack of detail about a registered provider to deliver the affordable homes. There is not, therefore, enough clear evidence to support this site's inclusion.

⁸ CDH.42

⁹ CDH.44

Conclusion on the extent of the supply

53. Using the agreed base date of 1 April 2023, I prefer the appellant's assessment of the of supply of deliverable housing sites. That is a supply of around 3.51 years or 2,279 dwellings, with a shortfall of 321 dwellings against the four-year period using the LHN figure. I note the appellant's view that the shortfall maybe considerably greater than this, but there is no evidential support either way for that currently, though it is generally fair to say that the Council's supply could go up or down compared to the position that I have assessed.
54. The outcome of my findings affects the number of affordable homes that form part of the supply. Although 20 affordable homes may come forward at Sundial House, that is based on a higher number of homes that I have not found to be deliverable. It would be unlikely, given the developer, for there to be no affordable homes delivered here, and the exact figure may be somewhere between the 10 suggested by the appellant and the 20 currently proposed. Therefore, I shall adopt the worst-case scenario of 10 affordable units. Using my findings and the parties agreed position¹⁰, 81 further affordable homes could, at best, form part of that supply. That is a supply of 16 per year.

Planning obligations

55. The completed s106 agreement would secure an obligation for off-site highway improvement works, including the site access, a raised table traffic calming facility, carriageway narrowing, and pedestrian crossing facilities. All are necessary so that the development does not have a detrimental impact on highway safety and capacity. The s106 agreement also includes a travel plan monitoring fee to enable the County Council to monitor the effectiveness of the travel plan so that the development supports and encourages the use of sustainable transport opportunities. Satisfactory evidence has also been provided to support the Council and County Council's legal fees.
56. The s106 agreement secures a financial contribution towards a Traffic Regulation Order and signage to enable parking restrictions to be enacted to avoid a detrimental impact on highway safety. The s106 agreement also secures the delivery of affordable housing to secure a policy compliant level of affordable housing. This includes the provision of First Homes. So that there will be no net loss of biodiversity, the s106 agreement secures BNG (including monitoring thereof), while the agreement also secures the provision of a car club vehicle, free membership for an initial period, and space within the development. This is to encourage the use of sustainable transport modes and to reduce the level of car ownership.
57. The contributions are secured through the s106 agreement and meet the statutory tests set out in Framework paragraph 57 and in Regulation 122 of the CIL Regulations. As such, they are material considerations in this appeal and the proposal would accord with CS Policies CS15, CS21, CS25, DMP Policies DM7 and DM21, the Development Contributions SPD and the Surrey County Council Development Related Travel Plans Good Practice Guide (2018) (Surrey Good Practice Guide).

Other considerations

Market housing

58. A mix of market house types and sizes would contribute to, and help boost, the Council's supply of market homes in an accessible location. The proposal would

¹⁰ ID 4

contribute to just over a month's worth of supply based on the evidence relating to the 2023 base date. A condition requiring the submission of reserved matters within two years would help deliver the whole scheme within the current five-year period (starting 1 April 2023). Hence, the proposal would help address the shortfall below the minimum requirements.

59. The last HDT results show the Council was delivering 90% of its requirements. Delivery of new homes at this level is an under delivery against the borough's needs, a situation which has been persistent for several years since the CS was adopted. The current Action Plan has not yielded sufficient change for the HDT result to hit 100%, and the next HDT result may be lower than the last due to the number of housing completions in 2022/23. In the meantime, a new Action Plan will be published, but the content of that is not yet publicly known.
60. It is not proposed to address the housing shortfall in the eLP. Instead, the eLP proposes to underdeliver by around 30% compared to the Borough's OAN, and no changes are proposed to the Green Belt. The eLP is currently paused while the Council reviews its housing trajectory and five-year supply dataset. That may see the Council's housing land supply figure change. There are also objections to the Council's approach to addressing its need, though it is keen to adopt an up-to-date plan. Yet the EiP is in its early stages, and there is no indication whether the eLP will be found to be 'sound' or potentially when.
61. The Framework seeks to significantly boost the supply of homes. This is aimed to delivering against needs so that there are enough houses that are available, affordable, and suitable for people so that they have accommodation for their current or future needs. In this context, the appellant invites me to attach very substantial weight to the provision of market housing and cite numerous appeal decisions to that effect¹¹. Numerous other appeal decisions have been referred to by the Council¹². However, in this case, significant weight is appropriate because of the extent of the shortfall, the quantum of housing being proposed, and the diversity of housing proposed for specific groups. I recognise the Council's supply figure may change, and the strategy in the eLP is disputed, but I do not know what the outcome of either will be. Nonetheless, the proposal would still deliver social benefits through new housing and contribute towards significantly boosting housing supply.

Affordable housing

62. The proposal would contribute up to 30 affordable homes (50%) and would accord with CS Policy CS21. This level of provision would exceed the requirements under eLP Policy HOU4, which seeks 40% of homes to be affordable. There is an agreed policy compliant tenure split, which would see a range of affordable house tenures delivered.
63. CS Policy CS21 sets a target of delivering at least 1,150 affordable homes across the current plan period. That equates to 77 affordable homes per annum. In that time, the Council has delivered an average of 68 affordable homes per year, which means that there is a cumulative shortfall of around 110 affordable homes compared against the 'at least' figure of CS Policy CS21.
64. However, the need has only increased since the CS was adopted. The Kingston upon Thames and North East Surrey SHMA 2016 (SHMA) identified a need for 332 affordable homes per year between 2015/16 and 2024/35. Since the start of the SHMA period, there have been an average of 63 affordable home

¹¹ ID6, Paragraph 6.17

¹² ID6, Paragraphs 6.18 and 6.20

completions per year. This has led to a shortfall of 2,153 affordable homes over this period, equal to an average annual shortfall of 269 affordable homes.

65. The more recent Elmbridge Borough Council Local Housing Needs Assessment 2020 (LHNA) identifies a need for 269 affordable homes per year between 2019/20 and 2038/39. Policy HOU4 of the eLP relies on the LHNA figure. Against the LHNA's target, the Council have delivered an average of 90 affordable homes per year. This means that a shortfall of 717 has arisen which is an average annual shortfall of 179 affordable homes.
66. To address this within the next five years, the Council would need to deliver 412 dwellings per year compared to 269 per year. The number of affordable homes coming forward is substantially below the level of delivery that would redress previous under delivery and keep pace with demand. The situation is only worse on the appellant's case. Regardless, the existing shortfall will become worse, and I am unclear whether the eLP will change matters.
67. This is against the backdrop of considerably higher house prices and rent than the national average, the rising number of people on the housing register and long waits for 1, 3 and 4 bed homes, and the rising use of temporary accommodation by the Council to house homeless people.
68. Not providing enough affordable homes affects people. Being able to access good housing has a bearing on everyday life. There are also socio-economic effects such as financial security and stability, physical and mental health, decreased social mobility, and children's education and development.
69. The proposal would deliver up to 30 affordable homes with a suitable tenure split. Both aspects are secured by the s106 agreement and policy compliant. The proposal would make a strong and vital contribution to the Council's forward supply, which would remain below the identified need. At the same time, the proposal would help reduce the growth of the existing shortfall. I have given the appeal decisions cited by the appellant¹³ careful consideration insofar as the weight to give this benefit. These decisions involve either a greater numeric provision, a provision above that required by policy, or involve a far greater shortfall. While recognising the importance of the provision of affordable homes, I give that substantial positive weight in this case.

Sustainable location

70. The site is a sustainable location due to its proximity to Claygate and Esher and the facilities and services they offer, which could be reached by a range of travel modes. The site is also well placed for onward connections to central London, among other places. Developing in sustainable locations is the fundamental thrust of national and local policy, but achieving this here while delivering the borough's needs in a sustainable manner carries limited positive weight despite the conflict that I have identified with the CS's spatial strategy and the site's location in the Green Belt.

Biodiversity net gain

71. The BNG submitted shows that the proposal is likely to result in an on-site net loss of 3.51 habitat units despite a 0.53 gain in hedgerow units (+33.76%) and 0.44 gain in river units (+86.72%). Off-site mitigation at West Clandon within the same National Character Area in Surrey is proposed in line with the mitigation hierarchy. This would see the loss of medium distinctiveness habitat

¹³ ID7, Paragraph 74, Footnote 195

compensated for by using the same broad habitat type or with a higher distinctiveness habitat. Overall, a BNG of at least 39.9% is anticipated, but this could be as high as 45.41%. The precise level of BNG would be identified at reserved matters stage, but the s106 agreement secures a BNG in the region of 40-45% in line with the statutory metric and habitat trading rules.

72. Neither CS Policy CS15 nor the Framework set a specific figure for BNG. There is also no statutory requirement for BNG as the planning application was submitted before 12 February 2024. However, the 10% statutory requirement is a relevant consideration. Thus, the provision of BNG, which goes beyond that requirement, albeit with the off-site gains being delivered outside Elmbridge, is a measurable net gain that I give moderate positive weight.

Economy

73. The proposal's construction would result in direct, indirect, and induced jobs and spending in the local economy. It is estimated that around 138 new jobs would be created. Future occupants would also bring on-going expenditure of around £1.9 million per year to the economy. A portion of that is likely to be spent locally. There is also typically a one-off economic boost from residents moving into their new properties. In this case, that is estimated to be roughly 327,720 for sixty dwellings. The proposal would therefore deliver short-and long-term economic contributions that, having regard to Framework paragraph 85, carry moderate weight due to the scale of the scheme and contributions that flow from that.
74. Although Council Tax receipts would be created for the Council and Claygate Parish Council, these are not benefits as they are collected to mitigate the additional requirements that the new homes would bring. They carry neutral weight in the planning balance.

Recreation area, pedestrian crossing and design

75. The recreation area/open space within the site would be publicly accessible and available for use near to existing and future occupants. That benefit is tempered by that the land being more prone to flooding, which could affect its year-round use. Accordingly, I attach limited positive weight to this benefit.
76. A pedestrian crossing on Hare Lane would help create a safer environment for pedestrians, whether they are existing or future residents. The crossing was considered necessary by the Highway Authority to make the development acceptable in planning terms. As such, while it would be beneficial to existing residents, its provision carries limited positive weight.
77. Given that the appeal scheme is in outline and detailed matters relating to its design are reserved for future consideration, it remains to be seen whether a low carbon high-quality form of development compliant with local and national planning policy will materialise. I attach this matter neutral weight.

Other points raised

78. The proposal would change the site's character and appearance, but I do not consider that change unacceptable given the site's context and the potential to incorporate existing planting, add further planting, and include an area of open space. Any adverse effects could be made satisfactory at the detailed design stage. Similarly, subject to detailed designs, the proposed dwellings would not result in harm to residents living conditions due to the size of the site and its relationship to neighbouring properties.

79. Highway safety concerns have been raised by residents, but measures are secured through the s106 agreement for highway improvements, and changes are proposed to the junction of Raleigh Drive and Loseberry Road to accommodate the proposed development. A planning condition would ensure the effects of construction traffic would be managed to limit these effects, taking into account local weight restrictions.
80. I share the view of the local lead flood authority, the EA and the Council that the proposal would be acceptable in flood risk and drainage terms, subject to planning conditions. As such, the proposal would accord with CS Policy CS26.
81. Surveys set out the site's ecological baseline and include recommendations. Existing trees and hedgerows are to be retained, and a designed landscape strategy for the site could come forward at reserved matters stage.
82. Although it is suggested that local infrastructure such as doctors and schools are already full, this is not supported by substantive evidence, and no planning obligations are sought to mitigate the proposal's effects on these facilities. As a result, subject to the imposition of planning conditions to secure a landscape and ecological management plan and a construction environmental management plan, I agree with the Surrey Wildlife Trust that the proposal would be acceptable in biodiversity terms.
83. I note the dismissed appeal decisions in the Green Belt referred to by the Council in its evidence; however, as they included various other issues where harm was identified, other forms or scales of development, or a different emerging plan context, many are not directly comparable to the case before me. Anyway, I have considered this appeal on its own planning merits.

Planning Balance

84. The proposal is inappropriate development which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. There would be limited harm to the openness of the Green Belt and to one of the purposes of including the land within it. The totality of Green Belt harm attracts substantial weight. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
85. I have identified limited harm with the Council's spatial strategy set out in CS Policies CS1, CS2 and CS11. These policies are out of date for the reasons set out. The proposal accords with CS Policy CS26. The s106 agreement secures contributions required by CS Policies CS15, CS21, CS25, DMP Policies DM7 and DM21, the Development Contributions SPD, and the Surrey Good Practice Guide. Some of the obligations would provide the local community with affordable homes and access, recreation, and wellbeing benefits that weigh in favour of the proposal. There would also be a BNG benefit. The remaining contributions would mitigate the proposal's effect, so they do not weigh in favour or against the proposal.
86. The proposal would result in benefits, but also cause harm. Weighing the two up is not a mathematical outcome; it is an overall judgement, and the other considerations must clearly outweigh for very special circumstances to exist, not just tip the balance. The other considerations do not need to be special of their own but can be a collection of ordinary factors. I consider that all the other considerations do not clearly outweigh the identified harm. Hence, the very special circumstances necessary to justify the development do not exist,

and I conclude that the proposal would not accord with DMP Policy DM17 and Framework paragraph 153.

87. Therefore, even if the most important policies are out of date when they are taken together, there is a policy in the Framework that protect areas or assets of particular importance that provides a clear reason for refusing the proposal. Therefore, the proposal would not accord with DMP Policy DM1 even though its wording is not consistent with the Framework. This leads me to a conclusion that the proposal would conflict with the development plan as a whole, and there are no material considerations that indicate that this decision should be made otherwise than in accordance with the development plan.

Conclusion

88. For the reasons given above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ned Helme Counsel, instructed by Woolf Bond Planning Ltd

He called:

Steven BROWN BSc (Hons), DipTP, MRTPI LA Managing Director, Woolf Bond Planning Ltd

Clive Self Dip LA, CMLI, MA Managing Director, CSA Environmental

James Stacey BA (Hons), DipTP, MRTPI Managing Director, Tetlow King Planning

Christina Daniels* Partner at BDB Pitmans LLP

Statements appended to Mr Brown's Proof of Evidence:

Mark Rose BSc (Hons) MSc PGDip MCIEEM Associate Director, CSA Environmental

Phil Bell BEng (Hons) CMILT MCIHT Managing Director, Motion Consultants Ltd

Glenn Charles BEng Chartered MICE,
MIEAust CPEng NER APEC Engineer IntPE(Aus) Managing Director, Charles & Associates
Consulting Engineers Ltd

FOR THE LOCAL PLANNING AUTHORITY:

James Corbet Burcher Counsel, instructed by Georgina Healy,
Senior Solicitor, Legal Services, Elmbridge
Borough Council

He called:

Jack Trendall BA (Hons), MA, MRTPI Principal Planning Officer, Elmbridge Borough
Council

Paul Falconer PgDip, MRTPI Development Manager, Elmbridge Borough
Council

David Withycombe BSc, MSc, CMLI Director, Land Management Services

Georgina Healy* Senior Solicitor, Legal Services, Elmbridge
Borough Council

* Participated in the Planning Obligation session only.

INTERESTED PARTIES:

Anthony Sheppard
Geoff Herbert
Stephen Ellis
Caroline Ferrari

INQUIRY DOCUMENTS

- ID1 Appellant Opening Statement and Appearances
- ID2 Council Opening Statement and Appearances
- ID3 Errata Note, Mr Stacey Affordable Housing Rebuttal, including extract from Green Belt Boundary Review – Supplementary Work
- ID4 HLS SoCG Further Addendum
- ID5 Council note (including appendix 1 and 2) on clause 14, legal costs and first homes monitoring fee
- ID6 Council Closing Submissions
- ID7 Appellant Closing Submissions

CORE DOCUMENTS

Found in the List of Core Documents, dated 19 March 2024.

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED

- 1 – Letter, dated 30 April 2024 from Council re request for an adjournment
- 2 – Letter, dated 2 May 2024 from Inspector confirming pause to eLP examination
- 3 – Statement of Common Ground – Addendum, St. George’s Gardens
- 4 – Council’s Pre-Hearing Statement on Matter 5: Housing Delivery