
Appeal Decision

Site visit made on 5 December 2016

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 19th December 2016

Appeal Ref: APP/D3640/W/16/3155300

Land to Rear of Salisbury Terrace, Mytchett, Camberley GU16 6DB

- 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 Sphere Homes Ltd against the decision of Surrey Heath Borough Council.
 - The application Ref 16/0261, dated 16 March 2016, was refused by notice dated 22 June 2016.
 - The development proposed is the erection of 2 new units at the land of the end of Salisbury Terrace, Mytchett, Surrey GU16 6DB. This includes 2No. semi detached properties, with associated access road, car parking and amenity space.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are (i) the effects of the proposal on the character and appearance of the area; (ii) the effects on the living conditions of the occupiers of Arosfa with regard to outlook; and (iii) the effects on the Thames Basin Heaths Special Protection Area (SPA).

Reasons

Character and appearance

3. The appeal site forms part of a much larger open area at the eastern end of Salisbury Terrace. The surrounding dwellings comprise a mix of one and two-storey detached houses and a row of terraces.
 4. The mature vegetation lining Mytchett Road immediately to the south and along the nearby railway line, in combination with the other development in Salisbury Terrace, visually contains the appeal site. Therefore, the proposed development would only be seen in localised views.
 5. However, development along Salisbury Terrace is mostly positioned to face the street with generous rear gardens extending from the main rear elevations. Although Joyden, a detached property, is positioned side on the street, its rear garden nonetheless leads from its rear elevation. In contrast, the proposal would provide only very minimal garden space at the rear of the dwellings with most of it concentrated to their sides. The available evidence is clear that this as a result of an attempt to avoid development within the 400m SPA buffer zone.
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6. Whilst this is noted, the overall grounds around each dwelling would be of irregular shape in comparison to the predominantly rectangular or rectilinear gardens of surrounding properties. I do not agree that there is a predominance of irregular shaped plots such that they form a defining characteristic in and around Salisbury Terrace. In my view, the proposed angular positioning of the dwellings and their garden spaces would appear contrived and at odds with the general form of surrounding development. The dwellings would also have a poor relationship to the site's western boundary because of their uncharacteristic proximity to it.
7. Further, although there is a mix of dwelling types in Salisbury Terrace, they are nonetheless mainly detached and this is particularly the case within the immediate vicinity of the appeal site. The juxtaposition of a pair of semi-detached houses to the neighbouring detached properties would appear incongruous, which would be exacerbated by their angled position. I have had regard to Guiding Principle MT2 for Main thoroughfares set out in the Surrey Heath Western Urban Area Character Supplementary Planning Document (2012) (SPD). Whilst this encourages the continuation of a mixed character in terms of uses and architectural styles, it nonetheless states that new development should have regard to a number of other criteria, including being set close to the street with deep rear gardens and maintaining the existing rhythm of plot widths. On balance, for the reasons given, I consider that the proposal would not be in accordance with the overall objectives of the SPD.
8. The appellant suggests that the SPD carries limited weight but no substantive evidence has been submitted to support this claim. The SPD supports development plan policy and is clearly aimed at guiding development within the respective character areas. Moreover, it is a non-prescriptive design code and therefore accords with paragraph 59 of the National Planning Policy Framework (the Framework). Accordingly, it attracts substantial weight.
9. The appellant has drawn my attention to other policies of the Core Strategy, namely Policy CP2, which relates to sustainable development and CP6 that promotes a range of housing type and sizes. However, as I have not been provided with the full details of these policies I cannot be certain that they lend any support to the proposal.
10. In any case, even where a proposal would occupy a sustainable location, that matter alone does not mean it would constitute 'sustainable development' as couched in the Framework when assessed against its three economic, social and environmental strands. Moreover, whilst the Framework is a material consideration, it does not alter the statutory status of the development plan as the starting point for my decision. Even in the circumstance that its policies are judged to be out of date for the purposes of Framework paragraph 49, they may still carry weight.
11. To conclude on this first main issue, in addition to the identified conflict with the SPD, the proposal would run counter to Policy DM9 of the Core Strategy and Development Management Policies (2012) (the Core Strategy), which amongst other things, requires development to be of high quality design and respect local character.

Living conditions

12. The proposed dwellings would be sited at an angle to the side boundary of Arosfa's rear garden and the northernmost dwelling in particular, would be in close proximity to the rear elevation of this neighbouring dwelling.
13. The appellant asserts that the dwellings would be of a 'chalet' type, which would reduce the effects on the outlook from Arosfa. However, this is not borne out by what is shown on the submitted plans. Rather, they would have a half-hipped roof that would do little to reduce their overall bulk and mass and the positioning of the first floor windows would not be akin to a chalet style building. Furthermore, the proposed rear flat-roofed part of the dwellings would project only a short distance from their main rear elevations and would not span their full width. This would have only very minimal effects in reducing the dwellings' presence in views from Arosfa's upstairs rear rooms and rear garden. Thus, they would appear omnipresent and overbearing.
14. The outlook for Arosfa's occupiers would therefore be unacceptable thereby bringing the proposal into conflict with Core Strategy Policy DM9 that also requires development to respect the amenities of neighbouring occupiers.

Thames Basins Heaths SPA

15. The Thames Basin Heaths SPA is a European designated site because the heathland it contains provides a habitat for rare birds that nest on the ground or at low level. Development involving a net gain of one or more dwellings is considered to give rise to likely significant effects on the SPA where it falls within the identified 400m SPA buffer zone.
16. Core Strategy Policy CP14B states that the Council will only permit development where it is satisfied that this will not give rise to likely significant adverse effects upon the integrity of the SPA. Importantly, it states that no (net) new residential development will be permitted within 400m of the SPA. This policy carries forward the principles of Policy NRM6 of the South East Plan¹ (2009) (SEP). The Thames Basin Heaths SPA Delivery Framework (the Delivery Framework) states that within the 400m zone, mitigation of the likely effects on the SPA is not possible because this buffer addresses the most acute effects of urbanisation such as litter, fire setting and cat predation.
17. SEP Policy NRM6 similarly identifies a 400m exclusion zone where mitigation measures are unlikely to be capable of protecting the integrity of the SPA. However, the policy also states that, in exceptional circumstances, this exclusion zone may be varied where evidence demonstrates that mitigation measures will be capable of protecting the integrity of the SPA. It says that these small locally determined zones will be set out in local plans and SPA avoidance strategies and agreed with Natural England (NE). This approach is reflected in paragraph 4.5 of the Delivery Framework that reinforces the presumption against development with the 400 zone.
18. There is dispute between the parties over how the exact extent of the 400m zone should be calculated and I note that there are no objections from NE in relation to the previous proposal for four dwellings on a larger site (but including the area of the current appeal site). There are two letters from NE within the appeal documents. One of these relates to the previous proposal

¹ The South East Plan has been revoked but certain policies were retained, including Policy NRM6.

wherein NE's view is that the restriction on development in the 400m zone should apply relative to the dwelling's "front door access" and this is the case put forward by the appellant. The other letter is specific to the current proposal and clearly shows that NE is making the assumption that the current proposal meets the mitigation requirements set out in the Thames Basin Heaths SPA Avoidance Strategy. However, this strategy document only addresses mitigation requirements for development within the SPA 5km zone of influence but outside the 400m buffer zone. Therefore, NE is assuming the location of the proposed dwellings to be outside the 400m buffer zone.

19. Nevertheless, what constitutes 'front door access' could be taken in two ways. It could be construed as referring to the front doors themselves i.e. the threshold of the dwellings or to the access that leads to those front doors. In my view, this is unclear from the NE advice. However, it would seem unusual to me, for NE to contradict the development plan and Delivery Framework given its involvement as an adviser to the Thames Basin Heaths Joint Strategic Partnership Board. Given the lack of clarity, I am not convinced that NE has taken a contrary position to the Council. On this basis, the front parking area, and thus the development overall, would be within the 400m zone.
20. However, the above mentioned development plan policies and the Delivery Framework set out that in exceptional circumstances, the 400m zone may be modified to take account of physical obstructions to cat movement and human access.
21. The appellant has put to me that the nearby railway line and canal corridors could serve as a barrier to cat movement. However, this is by no means guaranteed as there is a bridge over the canal close to the site and I have no substantive before me that sets out why roaming cats would be unlikely to go near the railway line or that it would present an impenetrable barrier to them. I am not therefore persuaded that the exceptional circumstances exist to justify a departure from the provisions of the development plan.
22. Overall, on the balance of the available evidence, I cannot be satisfied that the proposal would safeguard the integrity of the SPA and it therefore runs counter to Core Strategy Policy CP14B and Policy NRM6 of the SEP. It would also conflict with national policy and legislation.
23. Two other appeal decisions have been drawn to my attention by the parties. However, they do not contain anything that leads me to conclude that they relate to directly comparable schemes. In any case I have determined the appeal on its own merits and my considerations with regard to the SPA are not determinative, given the other identified harm in relation to the first two main issues.

Other matters

Housing land supply

24. Paragraph 47 of the Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements plus an additional buffer of 5% (moved forward from later in the plan period), which should be increased to 20% where there has been a record of persistent under delivery of housing.

25. The parties agree that the Council is unable to demonstrate a five year supply of deliverable housing sites (the five year HLS). In such circumstances, paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date.
26. Notwithstanding the parties' respective evidence in relation to the engagement of paragraph 14 of the Framework. However, even if I were to accept the appellant's argument in this respect, I have found that the proposal would give rise to significant harm. On balance, the very modest contribution of two dwellings to the Borough's housing supply would not outweigh this harm.
27. Given that, in order for a proposal to constitute sustainable development, it must accord with all three strands as set out in the Framework; economic, social and environmental. For the reasons already given, this would not be the case and the proposal would not therefore be sustainable development.

Housing allocations

28. The appellant argues that the principle of development on the appeal site should be considered acceptable as the wider site was allocated for such in the previous development plan. However, there is no guarantee that the site would be built out and neither is there any clear indication that it would be developed in a form that was at odds with the area's character and appearance.
29. Moreover, and of particular note, the site was allocated prior to the designation of the Thames Basin Heaths SPA. Accordingly, this now presents a significant barrier to development which may go some way to explain why the site has not been developed to date. I therefore give this strand of the appellant's argument very little weight.

Conclusion

30. For the above reasons and having had regard to all other matters raised, the appeal does not succeed.

Hayden Baugh-Jones

Inspector