

## Appeal Decision

Site visit made on 25 January 2017

**by Claire Victory BA (Hons) BPI MRTPI**

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

**Decision date: 28 April 2017**

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### **Appeal Ref: APP/L3625/W/16/3158269 118 Nork Way, Banstead, Surrey SM7 1HP**

- 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 Mr Mark Hendy (Shanly Homes Limited) against the decision of Reigate & Banstead Borough Council.
  - The application Ref 16/00976/F, dated 25 April 2016, was refused by notice dated 7 September 2016.
  - The development proposed is the demolition of 118 Nork Way and redevelopment of the garden land at the rear of 110-122 Nork Way for the erection of 8 no detached houses including associated landscaping, vehicular access and parking.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the demolition of 118 Nork Way and redevelopment of the garden land at the rear of 110-122 Nork Way for the erection of 8 no detached houses including associated landscaping, vehicular access and parking at 118 Nork Way, Banstead, Surrey SM7 1HP in accordance with the terms of the application, Ref 16/00976/F, dated 7 September 2016, subject to the conditions in the attached schedule.

### **Preliminary Matter**

2. The Council advised after the application was refused that there was a third reason for refusal that had not appeared on the Decision Notice, and that it maintained an objection to the scheme due to the lack of an affordable housing planning obligation. However, subsequently the Council has confirmed that in light of West Berkshire Court of Appeal Judgement<sup>1</sup> relating to planning obligations and affordable housing and the update to the Planning Practice Guidance<sup>2</sup>, it no longer seeks affordable housing contributions.

### **Main Issues**

3. The main issues in the appeal are therefore:
  - The effect of the proposal on the character and appearance of the surrounding area; and
  - The effect of the proposal on the living conditions of neighbouring occupiers, with regard to outlook and privacy.

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<sup>1</sup> Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441

<sup>2</sup> Planning Practice Guidance paragraphs 013-017, 019-023 and 031

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## Reasons

### *Character and appearance*

4. The appeal site is formed of No 118 Nork Way, a detached dwelling, and land at the rear of No 118 and part of the rear gardens of adjacent properties at 110-122 Nork Way. To the south of the appeal site are the rear gardens of bungalows on Larchwood Close.
5. Nork Way is a wide tree lined avenue with grass verges, and properties in the area are predominantly large detached two storey houses and chalet bungalows with generous frontages and rear gardens. The rear gardens of the properties forming part of the appeal site are about 70m long.
6. The appeal proposal would be a backland development with a single access created by the demolition of No 118. The Council's Local Distinctiveness Guide SPG (2004) identifies the area as 1930- 1950s suburbia. However the north side of Nork Way has a number of infill developments in a cul-de-sac layout each with a single access taken from Nork Way, such as Acer Close and Rowan Close in the vicinity of the appeal site. Some of these have been built relatively recently and have considerably smaller plots than the earlier established pattern of development.
7. Four detached dwellings, on Plots 5 to 8 would be situated at right angles to the proposed rear boundary of the adjacent properties on Nork Way. The Council requires a gap of 1m between flank walls and side boundaries. In this case there would be a gap between each of these dwellings of about 2 metres, albeit this would be slightly less at eaves level due to the roof overhang.
8. The spacing between properties on Nork Way varies but many are substantial dwellings built across much of the site frontage with only about a metre gap to each side boundary. Moreover, the projecting front gables of the dwellings on Plots 5 to 8, which are handed on Plots 6 and 7, and the set forward of the dwelling on Plot 5 would break up the massing and rhythm of the dwellings. This would help to prevent a terracing effect.
9. Further to the above, the dwellings on Plots 5 to 8 would not be directly visible from Nork Way and due to the proposed site layout there would be limited views of the group from within the development itself. Given the existence of other backland development of a similar layout and form in the locality, I consider the development would not be markedly out of character with the pattern and form of housing within the surrounding area.
10. The remaining donor dwellings would each retain a rear garden of approximately 30m in depth, and the Council are satisfied that the scheme would provide adequate amenity space for each dwelling. This would maintain the existing suburban character of the area.
11. I therefore conclude that the proposal would not harm the character and appearance of the surrounding area, and would comply with Policies Ho9, Ho14 and Ho13 of the Reigate and Banstead Local Plan (LP) (2005), which require developments, amongst other things, to conform to the pattern of development in the surrounding area and prevent the loss of residential amenity from significant changes to the character of an area arising from backland development.

12. It would also accord with policy CS4 of the Core Strategy (CS) (2014) which requires development to respect, maintain and protect the character of the valued townscapes in the Borough, and to be a high quality of design which takes direction from the existing character of the area and reflects local distinctiveness.

#### *Living conditions*

13. The appeal site is at a higher level than houses on Nork Way, and ground levels rise across the appeal site towards Larchwood Close. Plot 8,<sup>3</sup> referred to as Plot 4 in the Council's statement, would be the closest property to the rear of properties on Nork Way, and the flank wall would extend most of the way across the rear boundary of No 112. Nonetheless, even taking into account an increase in ground level above the rear garden of No 112, the 30m length of the garden would provide sufficient separation to prevent the dwelling from appearing as an unacceptably overbearing feature.
14. Turning to the potential for loss of privacy, the dwellings on Plots 1 to 4 would face towards the rear gardens of Nos 114 to 122. No 114 would not be directly overlooked as it would be located opposite a single storey garage; No 116 would be screened by mature trees that are proposed to be retained and No 118 is to be demolished to create the site access.
15. The first floor windows of the dwellings on Plots 2 and 3, which serve bedrooms, would overlook the rear gardens of Nos 120 and 122 Nork Way, but there would be over 40 metres between the proposed and existing dwellings and due to the generous size of the gardens of Nos 120 and 122 there would be sufficient separation from the rear windows and sitting out areas adjacent to the dwellings to avoid any material loss of privacy.
16. For the above reasons I conclude that the development would not materially harm the living conditions of neighbouring occupiers in respect of outlook or privacy. It would accord with LP Policy Ho9, which states that the layout and design of developments should not seriously affect the amenities of adjoining properties. The Council has also referred to CS Policy CS1 which sets out a presumption in favour of sustainable development. As I have found there would be no conflict with the other policies in the development plan, the proposal would accord with Policy CS1.

#### **Other Matters**

17. Properties abutting the appeal site on Larchwood Close would be about 25 metres from the rear wall of the proposed dwellings and are situated at a higher ground level. There are also mature trees along the appeal site boundary that would provide some screening and additional planting is proposed. Material harm to the occupiers of properties on Larchwood Close from overlooking or loss of outlook would therefore be avoided.
18. A number of trees within the site identified as being of low amenity value are proposed to be removed, but most existing mature trees are to be retained, including those protected by a Tree Preservation Order. The details of works affecting trees can be controlled by appropriate conditions.

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<sup>3</sup> As shown on the Site Layout 1304\_pln\_202 Rev A

19. It has been put to me that there are covenants on the appeal site to prevent the redevelopment of garden land, but this is a private legal matter and outside the scope of this appeal. As such I have given this matter little weight.

**Conditions**

20. In addition to the conditions referred to above, I have imposed a condition specifying the approved plans, for certainty. Details of external materials, landscaping and boundary treatment are also required to safeguard the character and appearance of the area.

21. In light of the varying ground levels across the site I have attached a condition to require details of the existing ground levels and finished levels of the permitted buildings in order to safeguard the amenity of neighbouring occupiers.

22. Conditions requiring details of the vehicular access, parking and turning and for these to be provided and retained are necessary in the interests of highway safety. A Construction Transport Management Plan is required, interests of highway safety and to safeguard residential amenity. A surface water drainage scheme is required to be submitted in order to reduce run-off within the site and to the highway.

23. The Council has suggested that permitted development rights be removed from the proposed dwellings in respect of dormer windows, first floor windows or roof lights and extension, but no exceptional circumstances have been put forward to justify this, as advised by the Planning Practice Guidance, so I shall not impose the condition.

**Conclusion**

24. For the above reasons I conclude that the appeal should be allowed.

*Claire Victory*

INSPECTOR

## **Schedule of Conditions**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The developments shall not be carried out except in complete accordance with the details shown on the submitted plans: Site Location Plan 1304\_LOC\_200 Rev A; Site Layout Plan 1304\_PLN\_201 Rev A; Site Layout Plan 1304\_PLN\_202 Rev A; Site Layout Plan 1304\_PLN\_203 Rev A; Combined Plan 1304\_PLN\_204; Combined Plan 1304\_PLN\_205; Combined Plan 1304\_PLN\_206 Rev A; Combined Plan 1304\_PLN\_207 Rev A; Combined Plan 1304\_PLN\_208; Combined Plan 1304\_PLN\_209; Combined Plan 1304\_PLN\_2010; Combined Plan 1304\_PLN\_2011; Combined Plan 1304\_PLN\_2012; Combined Plan 1304\_PLN\_2013 Rev A; Combined Plan 1304\_PLN\_2014 Rev A.
- 3) No development shall take place until the developer obtains the local planning authority's written approval of details of both existing ground levels and proposed finished ground levels of the buildings. The development shall be carried out in accordance with the approved levels.
- 4) No development shall take place until written details of the materials to be used in the construction of the external surfaces, including fenestration and roof, have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall be carried out in accordance with the approved details.
- 5) No development shall commence including groundworks preparation and demolition until all related arboricultural matters, including arboricultural supervision, monitoring and tree protection measures are implemented in strict accordance with the approved details contained in the Tree Protection Plan and Arboricultural Method Statement compiled by ACD on drawing number SH20465-03A dated March 2016.
- 6) No development, groundworks or demolition processes shall be undertaken until an agreed scheme of supervision for the arboricultural protection measures have been submitted to and approved in writing by the local planning authority. The pre commencement meeting, supervision and monitoring shall be undertaken in accordance with these approved details. The details shall include: pre commencement meeting between the retained arboricultural consultant, local planning authority Tree Officer and individuals and personnel responsible for the implementation of the approved development and timings, frequency of the supervision and monitoring regime and an agreed reporting process to the local planning authority. The supervision monitoring and reporting process shall be undertaken by a qualified arboriculturist.
- 7) No pruning, removal or other works to the retained trees and hedges located both within and overhanging the site, shall take place during construction, or for one year after completion except with the prior written approval of the local planning authority. Any tree work already approved as part of this consent and any other work undertaken should be done in accordance with British Standard 3998 'Recommendations for Tree Work'. If any of the retained trees or hedges within the site controlled by this condition are removed, die, or become damaged or diseased within one year of

completion, it/they shall be replaced before the expiry of one calendar year by trees or hedges, to a planting specification agreed in writing by the local planning authority.

- 8) No development shall commence on site until a scheme for the landscaping of the site including the retention of existing landscape features has been submitted to and approved in writing by the local planning authority. Landscaping schemes shall include details of hard and soft landscaping, including any tree removal/retention, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, and hedge or grass establishment), schedules of plants, noting species, plant sizes and proposed numbers/densities and an implementation and management programme. All hard and soft landscaping work shall be completed in full accordance with the approved scheme, prior to occupation or within the first planting season following completion of the development hereby approved or in accordance with a programme agreed in writing with the local planning authority. Any trees shrubs or plants planted in accordance with this condition which are removed, die or become damaged or become diseased within five years of planting shall be replaced within the next planting season by trees, shrubs of the same size and species.
- 9) No development shall commence until a Construction Transport Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. The CTMP shall include details of: parking for vehicles of site personnel, operatives and visitors; loading and unloading of plant and materials; storage of plant and materials; a programme of works (including measures for traffic management); the provision of boundary hoarding behind any visibility zones; measures to prevent the deposit of materials on the highway; before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused. Only the approved details shall be implemented during the construction of the development.
- 10) The development hereby approved shall not be first occupied unless and until the proposed vehicular access to Nork Way has been constructed and provided with dropped kerbs, tactile paving, and visibility zones in accordance with the approved plans. Thereafter the visibility zones shall be kept permanently clear of any obstruction over 1.05m high, with the exception of the street trees shown on drawing no. 1304\_pln\_203A.
- 11) The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking /turning areas shall be retained and maintained for their designated purposes.
- 12) The development shall not be occupied until a plan indicating the positions, design, materials and type of boundary treatment to be erected has been submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed before the occupation of the development hereby permitted.
- 13) Prior to the commencement of surface water drainage details shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.