
Appeal Decision

Site visit made on 17 October 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 16th November 2017

Appeal Ref: APP/R3650/W/17/3180314

Land to the rear of 102-104 Upper Hale Road, Farnham GU9 0PB

- 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 Ms Janine Maultby against the decision of Waverley Borough Council.
 - The application Ref WA/2017/0619, dated 24 March 2017, was refused by notice dated 14 June 2017.
 - The development proposed is the erection of a three bedroom chalet bungalow.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Ms J Maultby against Waverley Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council has submitted that the Farnham Neighbourhood Plan 2013 to 2031 (the NP) was made on 28 July 2017 and that Policy FNP1 is relevant to my consideration of this appeal. I have therefore had regard to Policy FNP1 in my reasoning below.
4. The appealed application was been submitted following the refusal of permission for two houses, subject to application WA/2015/2137, and for which the subsequent appeal¹ was dismissed. While the appellant and the Council both referred to the earlier development, neither party included any drawings for that development with their appeal cases. At my request, and for the purposes of clarification, the appellant has submitted copies of the drawings for application WA/2015/2137.

Main Issues

5. The main issues are the effect of the development on:
 - the living conditions of the occupiers of 5 Ball and Wicket Lane (No 5), with particular regard to privacy;
 - the living conditions for the occupiers of the development, with particular regard to outlook; and

¹ APP/R3650/W/16/3147469

- the living conditions of the occupiers of 102 Upper Hale Road (No 102), with particular regard to outdoor space.

Reasons

Living conditions of the occupiers of 5 Ball and Wicket Lane

6. The development would involve the construction of a three bedroom chalet bungalow to the rear of Nos 102 and 104 and fronting onto Ball and Wicket Lane. The dwelling would occupy some unkempt land and a parking area that historically formed part of the grounds of Nos 102 and 104, but is now separately owned.
7. No 5 is a bungalow on the opposite side of Ball and Wicket Lane with a floor level that is elevated above the sloping carriageway. No 5's front boundary comprises a retaining wall ranging in height approximately between 1.0 and 2.5 metres, to which a fence has been attached. The Council has submitted that the No 5's front fence has recently been installed and may require planning permission. The new dwelling's second bedroom window would be located around 8.0 metres² from No 5's front elevation and there are various windows in that elevation.
8. With a separation distance of 8.0 metres between No 5 and the new dwelling I consider that there would be potential for the users of bedroom 2, in particular, to overlook No 5 and thus cause an unacceptable loss of privacy for the occupiers of No 5. A front elevation separation distance of 8.0 metres would be significantly less than what is typical of Ball and Wicket Lane. In this regard under the previously proposed scheme the front bedroom windows would have been around 13 metres away³. I consider that with a separation distance of 13 metres the occupiers of No 5 would not have experienced a loss of privacy. The currently proposed dwelling does not compare favourably with the earlier proposal.
9. I accept that No 5's front fence would provide privacy screening. However, given the status of that fence is uncertain, I consider it cannot currently be relied on as being available to provide long term privacy screening for the occupiers of No 5. Without such a privacy screen being available I consider that the occupation of the new dwelling would have the potential to cause an unacceptable loss of privacy for the occupiers of No 5.
10. I therefore conclude that there would be potential for this development to cause unacceptable harm to the living conditions of the occupiers of No 5. In that respect the development would not accord with saved Policies D1 and D4 of the Waverley Borough Local Plan of 2002 (the Local Plan) and paragraph 17 (the fourth core planning principle) of the National Planning Policy Framework (the Framework). That is because the development would cause an unacceptable loss of privacy for the occupiers of a neighbouring dwelling resulting in harm to those residents' living conditions (amenities).
11. The Council contends that the development would be in conflict with Policy FNP1 of the NP because of 'its poor quality design, specifically its siting and scale relative to neighbouring dwellings, and the location and design of the first floor fenestration ...'. However, I find there to be no conflict with

² Based on the distance quoted in the Council's officer report

³ As quoted by the Council in its officer report

Policy FNP1 because while its first criterion addresses the design quality of new development that is the context of the character and appearance of development, rather than the effect of new development on living conditions. While Policy FNP1's seventh criterion addresses the effect of new development on living conditions, this policy's wording does not refer to the safeguarding of privacy.

Living conditions for the occupiers of the development

12. The siting of the dwelling would mean that its rear elevation would face towards the houses in Upper Hale Road to the east of the site, most particularly No 100, which is at a lower level given the ground levels. The chalet bungalow's third bedroom would be illuminated by a rear facing window, which the application drawings show would have an obscure glazed vertically hung lower section. That lower window section would have cill and transom heights respectively of 1.0 metre and 1.5 metres above the bedroom's floor level. The upper part of this window would be a clear glazed rooflight. The third bedroom's window having been so configured to minimise the potential for No 100 and the properties to the east of that house to be overlooked.
13. With the lower part of the third bedroom's window being obscure glazed the users of this room would have a very limited outlook, with in effect only glimpses of the sky being possible. While the height of the obscure glazed part of the window would be below the average eye line for many standing adults, that would not necessarily be the case for adults of below average height or children or for anyone sitting by and looking out of this window. I therefore consider that if the lower part of the third bedroom's window was not obscure glazed then unacceptable overlooking of No 100's garden could occur.
14. The appellant has submitted that the lower part of the third bedroom's window would not necessarily need to be obscured because the boundary treatment to be installed along the site's rear boundary would provide privacy screening. That boundary treatment, as shown on the application plans, being a combination of a fence 1.8 metre fence and hedging. However, there is a stepped brick wall along the site's rear boundary, which appears to be of recent construction. Limited details concerning the rear boundary enclosure have been provided and, given the sloping nature of the site, it is unclear whether the rear boundary treatment would have a level upper fence line or be stepped.
15. Given that No 100's garden level is below that of the site and the narrowness of that garden, I am concerned that the combined fence and hedge would have an overbearing presence for the users of No 100's garden. Accordingly without clarity about the height of the boundary enclosure and its relationship with No 100's garden level I cannot be certain that it would provide adequate privacy screening without it being an overbearing element of the development. I therefore consider that the available evidence has not demonstrated that the obscuring of the lower part of the third bedroom's window could be avoided.
16. Bedroom 3 would rely on the receipt of light and outlook from one comparatively small window for the size of this room. I consider that the resulting implications for outlook and the receipt of light would provide the

users of bedroom 3 with an oppressive living environment. That environment would not be conducive to providing good quality living conditions for the occupiers of this dwelling.

17. I recognise that rooflights are frequently installed as part of roof conversion schemes. However, existing roof heights and layouts create physical limitations on what habitable accommodation can be achieved in existing properties. Undertaking roof conversions may therefore require compromises to be made between the amount and quality of accommodation that can be provided. However, the appeal development would involve the construction of a new dwelling and I am therefore not persuaded that it would be acceptable for one of the dwelling's rooms to provide poor living conditions for its users from the first day of occupation.
18. I therefore conclude that the development would provide unacceptable living conditions for its occupiers. The development would therefore be contrary to the fourth core planning principle (paragraph 17) of the Framework because it would not provide a good standard of amenity for the future occupants of the building. The first reason for refusal cites conflict with saved Policies D1 and D4 of the Local Plan, however, I consider that not to be the case because the wording of those policies does not refer to the safeguarding of the living conditions of the occupiers of new dwellings. However, if the third bedroom's window was not obscure glazed and/or the rear boundary enclosure was excessive in height then the development would not accord with saved Policies D1 and D4 because the occupiers of No 100 would experience either a loss of privacy or an overbearing effect.
19. The Council's replacement Local Plan has reached an advanced stage in its preparation, with some post examination hearing modifications being required to be made prior to the examining Inspector's report being issued⁴. Conflict with Policy TD1 of the emerging Local Plan has been cited and there is no indication that this policy is subject to any unresolved objections requiring it to be modified. I therefore consider that weight can be attached to this policy, having regard to the provisions of paragraph 216 of the Framework. However, I consider there would be no conflict with emerging Policy TD1 because in the context of the consideration of the living conditions for the occupiers of new development, this policy's wording does not refer to the availability of outlook.

Living conditions for the occupiers of 102 Upper Hale Road

20. Historically part of the site formed part of the grounds of No 102. However, in connection with the current appeal it has been stated by a previous owner⁵ that for a 100 years or so this land has never been used as a garden by No 102's occupiers. The Council has not disputed that submission and I therefore consider the appellant's evidence with respect to this matter should be afforded considerable weight. Accordingly I consider that if a dwelling was to be built behind No 102 the status quo would be maintained in terms of there being an absence of a garden for the occupiers of No 102.
21. I therefore conclude that the development would not be harmful to the living conditions of the occupiers of No 102 because there would be no change with

⁴ Paragraph 9 of the Council's appeal case

⁵ Mr Wallace's letter of 17 July 2017

respect to the availability of a garden. As the development would not deprive the occupiers of No 102 of a garden I consider that there would be no conflict with saved Policies D4 or H10 of the Local Plan or the fourth core planning principle (paragraph 17) of the Framework. I similarly consider there would be no conflict with emerging Policy TD1.

Other Matters

22. I accept that the development would have no adverse effect on the character and appearance of the area or the operation of the public highway. Those matters, along with the modest contribution that this dwelling would make to the supply of housing in the area, weigh in favour of the development.
23. There is disagreement about whether or not the Council can currently demonstrate the availability of a five year supply of deliverable housing sites (HLS). That is because the Council has changed its stance from one of there being no HLS when the application was determined to one of there being an HLS during the course of this appeal. Even if I were to conclude that there is a shortfall in the HLS and that relevant policies for the supply of housing should not be considered up-to-date, I consider that the adverse impacts of granting permission would significantly and demonstrably outweigh this development's very limited housing supply benefits. The harm that I have identified gives rise to conflict with both local and national policy and I therefore consider this would be an unsustainable form of development.
24. The site is within the 5.0 Km zone of influence for the Thames Basin Heaths Special Protection Area (SPA) and the Council has adopted a disturbance avoidance strategy to mitigate the effects of new development on the integrity of the SPA. The avoidance strategy operates on the basis of financial contributions being made towards the maintenance of a Suitable Alternative Natural Green Space at Farnham Park (the SANG) and the implementation of a Strategic Access Management and Monitoring plan (SAMM). A Unilateral Undertaking (UU) obligating the appellant to make financial contributions of £2,661.00 and £796.00 respectively to the maintenance of the SANG and the SAMM strategy has been submitted. However, the UU is incomplete because while it has been signed it is undated.
25. I am content that the SANG and SAMM contributions are necessary and would meet the requirements for planning obligations set out in Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 and the Framework. However, as the UU is incomplete I cannot attach weight to it. Were this appeal not to be dismissed for other reasons the absence of an executed UU would be a reason for dismissal because necessary mitigation for the development's effects on the SPA would not have been secured. That said had I been minded to allow this appeal I consider it would have been appropriate for the appellant to have been given the opportunity to complete the UU's execution to secure the necessary mitigation for the SPA.

Conclusions

26. While I have found that there would be no harm to the living conditions of the occupiers of No 102, I have concluded that the development would cause unacceptable harm to the living conditions of the occupiers of No 5 and the development. I consider that the harm I have identified could not be overcome by the imposition of reasonable planning conditions.

27. I therefore conclude that the appeal should be dismissed.

Grahame Gould

INSPECTOR