The Planning Inspectorate

Appeal Decision

Site visit made on 3 July 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal Ref: APP/Y3615/W/18/3208183
54 Weyside Road, Guildford GU1 1HX

- 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 Marwan Field against the decision of Guildford Borough Council.
- The application Ref 17/P/02058, dated 29 September 2017, was refused by notice dated 5 February 2018.
- The development proposed is described as 'redevelopment of the existing residential dwellings at no.52 – no.54 Weyside Road, within Guildford Borough Council, to provide terrace of three new dwellings.'

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council adopted their new Local Plan (LP)[1] on 25 April 2019, since the determination of the application and prior to my decision on this appeal. In their evidence, the appellant makes reference to what at the time of their statement was an emerging Local Plan, albeit one that had been through examination and found to be sound subject to modification. It also appears from their evidence that they were aware of the relevant policies and recognised the stage it was at, apportioning reduced weight at the time given it was not adopted. That situation however has changed following adoption of the LP which, for the purposes of decision making, now forms part of the development plan.

3. Both parties have been given the opportunity to make comment on the most up to date situation with regard to the development plan. I have referred to the relevant policies below in my findings. The Council have confirmed that policies G5, H4, HE10 and NE4 of the 2003 Local Plan have been retained.

Main Issues

4. There are three main issues. These are:

   - The effect of the proposed development on the character and appearance of the area with specific regard to the River Wey Navigation Conservation Area (RWNCA);

[1] The Guildford Local Plan: strategy and sites (2015-2034)

- Whether the proposed development would be at an unacceptable risk of flooding; and
- The effect of the proposed development on the Thames Basin Heaths Special Protection Area (TBHSPA).

Reasons

Character and Appearance

5. The appeal site is a roughly rectangular plot of land that slopes downhill from the road frontage to the River Wey. It comprises a pair of two storey semi detached dwellings set back from and facing the road. The buildings are currently in a dilapidated state but share similar characteristics with the main building type of the street. These are mainly two storey, fully hipped roof pairs of evenly spaced semi detached dwellings of a relatively modest size and depth presenting to the street frontage. There is therefore a strong sense of uniformity to the area in built form terms, framed by the verdant feel of the wooded area opposite and the tranquillity of the River Wey to the rear. Parking tends to be off street, to the sides and front. Gardens extend to the rear and towards the river. The siting of the dwellings on the appeal site is somewhat anomalous, there being a noticeably greater set back into the site from the road. However, their style, scale and design (along with others in the above context) combine to have a positive effect on the character and appearance of the area and thus the RWNCA.

6. The proposed development would see a single building erected on the site comprising a terrace of three dwellings. It would be set back from and facing the street with parking to the front of each unit. Gardens would extend to the rear and down towards the river. It would be two storeys with rooms in the roof space and dormer windows facing the rear.

7. The erection of a block of three dwellings would all but fill the width of the existing site. There would also be a considerable depth to the building. Coupled with the overall height, the proposed development would appear noticeably unbalanced against the more modestly sized pairs of dwellings in the street scene. These factors would also decrease the spacious feel garnered by the separation of the existing pairs and the development of three units across the site would contribute to a crowding effect across the plot, against the general rhythm of the street scene. The design does propose to utilise features of other buildings such as the gable headed forward projections and hips to the roofs but these, along with the above factors and use of large dormer windows, combine to result in a confused overall design that lacks any clear identity of its own.

8. By virtue of the above factors, the appeal scheme would cause harm to the character and appearance of the area and consequently the RWNCA. Given the size of the plot and the overall extent of the proposed development in the wider context I would consider that the harm the appeal scheme would cause would be less than substantial. As such, and as per paragraph 196 of the Framework[2], it should be weighed against the public benefits. The scheme would provide a net addition of one dwelling which would have a social benefit. There would be benefits to the construction industry which would yield

[2] The National Planning Policy Framework 2019

additional expenditure which could potentially support local services for the benefit of the public. Additionally, the redevelopment of the site would represent something of a visual improvement over the existing situation.

9. However, these benefits would be somewhat constrained by the scale of the net addition and in the case of the environmental improvement, whilst it would secure the removal of the existing dilapidated buildings and tidy the site, it would be in favour of a scheme that would, for the above reasons, cause harm to the RWNCA. Overall therefore, I am of the view that the public benefits would not be sufficient to outweigh the harm and consequently the proposed development would neither preserve nor enhance the character or appearance of the RWNCA.

10. As well as conflicting with section 16 of the Framework, the harm that I have found would also be contrary to Policies D1 and D3 of the LP and G5, H4 and HE10 of the 2003 Local Plan. Together, these policies aim to ensure that new development (housing specifically) is of a high quality and contextually appropriate design and appearance and safeguards the historic environment from harm.

Flood Risk

11. Section 14 of the Framework sets out that, through the application of the Sequential Test (ST), new development should be steered towards areas at the lowest risk of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

12. I have not been directed towards a strategic flood risk assessment to provide a basis for the ST in this particular case. I note that the appeal scheme is in part replacement development and thus the residual risk in that case would not change from the existing situation. However, as the scheme also includes the net addition of one dwelling, I am required to assess whether it could be steered towards an area at lowest risk of flooding.

13. Given the scale of the net additional development and the nature of the site as an infill plot in a fairly built up area it does strike me that there would be other sites at a lower risk capable of accommodating it. In the absence of further detail from either party however, I am unable to reach a definitive view. That said, it is the case that not all of the appeal site is within an area at risk of flooding and certainly the proposed dwellings would all be built on that part of the site which is outside of the designated flood zone. This would be an improvement on the existing situation given that the aforementioned pair of semis that currently occupy the site are located closer to the River Wey. With this in mind, it certainly seems to be the case that, through the redevelopment of the site, new development would be steered towards an area at lower risk of flooding. I have seen no evidence of an ST having been applied however the appeal scheme appears on the basis of what I have seen to follow the aims of the Framework in terms of where new development should be located.

14. The rear gardens to the proposed dwellings would still extend into the flood zone but the dwellings, and more importantly egress from them in a flood event, would not be through a flood zone.

15. Whilst I consider the aims of the ST to have been fulfilled, there appears to still be disagreement between the parties as to the potential effects of a 1 in 100 year flood event and the levels thereof taking account of climate change. The levels advanced by the Council appear higher than those set out by the appellant's evidence when compared to the footprint and finished floor levels of the proposed dwellings. It would therefore, in ensuring appropriate flood resilience for the development's lifetime, be pertinent to apply the Exception Test (ET). There are, according to the Framework, two parts to the ET and they should both be passed for development to be permitted.

16. Whilst done via a post decision amendment to the flood risk assessment that was considered by the Council at the planning application stage, the appellant has provided revised sections to show that a suitable finished floor level above the higher 1 in 100 year event with climate change level can be achieved. Therefore, and with other factors set out in the flood risk assessment in mind, it seems to be the case that the development would be safe for its lifetime and would unlikely increase risk elsewhere. However, I have not been made aware of any wider sustainability benefits there would be to the community that outweigh the flood risk which is the other part of the ET that needs to be passed for development to be permitted.

17. In conclusion on this main issue, and despite the fact that the appeal scheme would not strictly be at an unacceptable risk of flooding, it cannot be permitted without addressing the second part of the ET, contrary to paragraph 160 of the Framework and Policy P4 of the LP which both seek to ensure that, amongst other things, development in areas at risk of flooding is appropriate.

The Thames Basin Heaths Special Protection Area (TBHSPA)

18. The Council considers that the proposed development has the potential to affect the integrity of both the TBHSPA and a Site of Special Scientific Interest (SSSI) as a result of increased recreational pressures that would arise out of the increase in the local population. In this case the net addition of one dwelling. In order to mitigate this impact, the proposed development would be required to contribute towards Suitable Alternative Natural Green Space (SANG) as part of the Council's adopted avoidance strategy.

19. Whilst setting out a commitment to enter into a planning obligation to provide a payment towards SANG, the appellant has not presented me with a completed one as part of the appeal proposals. In the absence of any mitigation whatsoever, I cannot be certain that the likely harm arising out of the appeal scheme could be acceptably reduced. The appeal scheme would therefore cause unacceptable harm to the integrity of the TBHSPA and the SSSI. Subsequently, and in regard to this main issue, there would be conflict with Policy P5 of the LP and NE4 of the 2003 Local Plan. Amongst other things, these policies set out that planning permission will only be granted for development where it can be demonstrated that doing so would not give rise to adverse effects on the ecological integrity of the TBHSPA, whether alone or in combination with other development as well as aiming to resist harm to habitats protected under law. They also set out the requirements for SANG provision which the appeal scheme, in the absence of a completed planning obligation, would not make.

20. There would also be conflict with section 15 of the Framework which sets out, amongst other things, protection for and the appropriate mitigation against

harm to areas of special protection, conservation and those of special scientific interest.

21. I have not conducted an appropriate assessment in respect of the Habitat Regulations or requested the appellant submit a completed planning obligation given my findings on the other two main issues since harm and development plan conflict arising therefrom would not be reduced in their light.

22. The appellant suggests that the requirement for SANG contribution could be secured by way of a condition which I have given some thought to. Putting aside how this would not affect my other conclusions, I am mindful of Planning Practice Guidance (PPG) which states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.

23. The use of a condition may be appropriate, again having regard to PPG, in the case of more complex or strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk, but I do not feel the proposed development amounts to such a situation.

Other Matters

24. The Council's evidence suggests that they are unable to demonstrate the supply of housing sites as required by the Framework. Albeit their comments on the LP suggest that this situation has changed to the point they now can and they appear to be delivering. It seems sufficiently clear however that, given the nature of the scheme (mostly replacement housing) and its location (provision of one new dwelling) the principle of the appeal scheme would be acceptable regardless of the housing supply situation. In any event, I would not be taken to the so called tilted balance of paragraph 11(d)(ii) of the Framework given that, on the application of paragraph 11 (d)(i) there are policies in the Framework that protect areas or assets of particular importance (habitat sites, SSSIs, areas at risk of flooding and heritage assets in this case) that provide clear reasons for refusing the development proposed.

25. The appellant refers to extant permissions[3] and permitted development allowances for extension works to the two dwellings that would, in their words, significantly increase the bulk and massing of the existing properties. This, it is explained, is a fallback position in relation to the appeal scheme. Not actually having the approved plans for these extant schemes before me I am unable to form a definitive view as to whether this would be the case. Suffice as to say however that, in any event, they are not before me to determine and would not reduce the harm that the proposed development I have considered would cause. In addition, it seems to be the appellant's intention to redevelop the appeal site rather than extend and alter the existing dwellings which further reduces the weight I am willing to ascribe to the perceived fallback position. I am not therefore persuaded to allow the appeal in this light.

[3] Council Ref 17/P/00615 and 17/P/01127

Conclusion

26. Whilst having regard to all other matters raised, it is for the reasons I have explained above that the appeal is dismissed.

John Morrison

INSPECTOR