



Appeal Decision

Site visit made on 4 June 2019

by P Wookey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 September 2019

Appeal Ref: APP/Q3630/W/18/3211421

**Land to the rear of 299,301,303,305 and 307 Green Lane, Chertsey
KT16 9QR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Green Lane Chertsey (Developments) Ltd against Runnymede Borough Council.
 - The application Ref RU.18/0747, is dated 11 April 2018.
 - The development proposed is described as seven chalet bungalows to the rear of 299, 301,303,305 and 307 Green Lane following the demolition of 307 Green Lane (revision of RU.17/1304).
-

Decision

1. The appeal is dismissed

Application for costs

2. An application for costs was made by Green Lane Chertsey (Developments) Ltd against Runnymede Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. Since the appeal was lodged the National Planning Policy Framework (the Framework) was revised in February 2019 and the Housing Delivery Test (2018) results were published. As a result, I have consulted the parties on both and have taken into account any comments.
4. Since the appeal was lodged, a High Court judgment with respect to previous appeals for the site were made, delaying the start of the current appeal process. As these judgments were relevant to this appeal, the timetable was extended, during which time the appellant submitted a revised statement and the Council was given the opportunity to consult third parties and revise its statement, to ensure that no party was at a disadvantage. The appeal has therefore been determined on that basis.

Main Issues

5. The main issues are the effect of the development on:
 - the integrity of the Thames Basin Heath Special Protection Area (TBHSPA):
 - and,

- the character and appearance of the surrounding area.

Reasons

Special Protection Area

6. The appeal site lies within 5km of the Thames Basin Heath Special Protection Area (TBSPA) which is a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). SPA's are protected sites classified in accordance with Article 4 of the EC Birds Directive and are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires member states to take appropriate action to avoid pollution or deterioration of habitats or any disturbances affecting birds, in so far as these would be significant having regard to the objectives of this article.
7. Whilst the site is not directly connected or necessary to the management of the TBSPA, this development, combined with the effect of other projects could have an adverse effect on the integrity of the TBSPA by reason that any residential development within 5km of any access point to the TBSPA would have the potential to increase the level of public access with harmful effects. As a result, any significant effects of the development proposed must be considered on a precautionary basis.
8. The development proposed comprises seven dwellings within 5km from the TBSPA and residents would have access to a number and wide range of public open spaces in the surrounding area which are not associated with the SPA. However, given the distance of the site from the TBSPA there is a reasonable likelihood that it would be accessed for recreational purposes by the future occupants of the development, and whilst minimal in itself when combined with other residential developments in the area, a significant effect would be likely to occur.
9. The view that there is a likelihood of a significant effect is reflected in the position of Natural England and the Council. In these circumstances the Conservation and Habitats Regulations 2017 requires that an Appropriate Assessment is carried out and as a result I have consulted Natural England during the course of this appeal.
10. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European designated site, but consideration can be given to any conditions or restrictions which secure mitigation and consequently determine that the development proposed would not adversely impact on the integrity of the TBSPA.
11. Natural England and the Council acknowledge that mitigation could be secured by a financial contribution to the TBSPA Strategic, Access, Management Strategy and I note that the appellant's willingness to make a payment with the intention of it being used for the mitigation of harmful effects of the proposed development on the integrity and interest features of the TBSPA.
12. However, whilst the appellant has submitted a Unilateral Undertaking (UU) in respect of such a payment, it is not dated and therefore is not complete. The UU also relates to additional land outside of the current appeal site. On that

basis, I am not satisfied that it would be sufficiently binding to secure the necessary financial contribution, if the appeal was allowed.

8. The Planning Practice Guidance (PPG) advises that a positively worded condition should not be used to require an applicant to enter into a planning obligation and that a negatively worded condition is unlikely to be appropriate in the majority of cases, except in exceptional circumstances. I do not regard this case to be strategically important, complex or at serious risk of delivery and therefore such an obligation would not comply with the six tests set out in the PPG and therefore the requirement for the obligation cannot be dealt with via a condition. Therefore, in the absence of a completed, signed planning obligation, the proposed mitigation would not be secured such that there would remain the likelihood that the appeal development would harm the integrity of the TBHSPA and would conflict with the Framework.

Character and Appearance

13. The appeal site is located on land to the rear of No 299 to 307 (odd) Green Lane. Green Lane is characterised by a uniform arrangement of dwellings with a range of architectural styles facing the road. Most have relatively small front gardens and longer gardens to the rear. This gives the area a spacious and pleasant suburban character.
14. The appeal site constitutes part of the rear gardens of No 299 to 305 (odd) Green Lane and the land occupied by No 307 Green Lane. It also borders properties on Gordon Close and Jersey Close and these boundaries are characterised by dense vegetation and mature trees. The site is relatively flat with a drainage channel, which runs along the boundary with Gordon Close.
15. The development proposed would demolish the existing bungalow, No 307, in order to provide an extended access from Green Lane to the land at the rear on which it is proposed to erect seven chalet bungalows. Three proposed dwellings would abut the rear gardens of No 299 to 305 (odd) Green Lane, and four proposed dwellings would border the rear gardens of the properties on Gordon Close.
16. The development proposed would not have a road frontage and for the most part, due to its distance from Green Lane, would be out of sight and the proposed landscaping along the length of the access road would help to screen views of the appeal development from Green Lane. Moreover, any visual impact from Green Lane would be limited due to the comparatively low height of the proposed new dwellings relative to the properties along Green Lane and the high tree line along the appeal site's rear boundary would be a more visible feature. Whilst only partial views of units 6 and 12 would be visible from Green Lane, their overall scale and design would not make them visually intrusive and as a result would not appear at odds with the surrounding area.
17. Within the site there would be appropriate separation between existing and proposed dwellings and the garden depths would comply with the minimum threshold of Policy H09¹ of the LP. As a result, the development proposed

¹ Policy H09 of the Runneymede Borough Local Plan Second Alteration 2001 (LP)

would not appear as a cramped form of development and would make effective use of the land available.

18. The chalet bungalow style design would be representative of the architectural style in the surrounding area, with five having dormers to only one side elevation and two having only rooflights². During my site visit, I observed that a number of properties in the immediate vicinity had made similar alterations to their roof design with dormer windows and rooflights. Consequently, the design of the proposed new dwellings would not appear incongruous nor have a significant effect on the character of the surrounding area.
19. I conclude that the development would not have an adverse effect on the character and appearance of the surrounding area and would comply with saved Policies BE2; H01 and H09 of the Runnymede Borough Local Plan Second Alteration (2001), which when read together seek to ensure new residential development is of a high quality, is sympathetic to its surroundings and makes effective use of land within the urban area.

Other Matters

20. I note that there is common ground between the parties that the development proposed would have no impact on neighbouring properties either existing or proposed due to loss of privacy; the height and variation in design of the new dwellings; separation distances with neighbouring properties and with boundaries; the amount of parking provision; flood risk subject to suitable conditions and the proposed infill of the ditch along the boundary of the appeal site with Gordon Close would be policy compliant subject to a separate consent being obtained.
21. I note the concerns of interested parties to the development proposed and its impact on access; overdevelopment; loss of privacy; noise levels and pollution; flooding; destroy wildlife habitats; loss of trees; bin locations and access arrangements. However, these concerns have not been raised by the Council and having taken all matters into consideration, they have not altered my decision.

Planning Balance

22. The Council does not dispute that it is not able to demonstrate that it has a five-year supply of housing land. In such situations Paragraph 11 d) of the National Planning Policy Framework (2019) (The Framework) states that where the most important policies for determining the application are out of date, there should be a presumption in favour of development, unless it meets the tests set out in that paragraph.
23. With respect to the economic, social and environmental benefits seven dwellings would make a modest contribution to the Council's housing supply and there would be some limited economic benefits during the construction period.
24. However, even if I were to conclude that the Council is not able to demonstrate a five-year supply of housing land and therefore its policies are out of date, the

² Site Plan Drawing BIB (3) dated 3/4/18

adverse environmental impact on the TBSPA would not be significantly and demonstrably outweighed by the benefits when assessed against the Framework as a whole. Consequently, Paragraph 11 d)(i) footnote 6 of the Framework would apply and for the forgoing reasons, the appeal proposals would not amount to sustainable development for which there is a presumption in favour of and therefore the so-called tilted balance would not be engaged.

Conclusion

25. For the reasons set out above, the appeal is dismissed.

Paul Wookey

INSPECTOR