
Appeal Decision

Site visit made on 28 May 2019

by Roy Curnow MA BSC(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2019

Appeal Ref: APP/M3645/W/19/3222832

Land between Nos 19 and 30 William Gardens, Smallfield, Horley, Surrey

- 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 Cala Homes (South Home Counties) against the decision of Tandridge District Council.
 - The application Ref TA/2018/1956, dated 25 September 2018, was refused by notice dated 17 January 2019.
 - The development proposed is the erection of two 4 bedroom detached dwelling houses with garages, access drive and associated infrastructure works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two 4 bedroom detached dwelling houses with garages, access drive and associated infrastructure works at land between Nos 19 and 30 William Gardens, Smallfield, Horley, Surrey in accordance with the terms of the application, Ref TA/2018/1956, dated 25 September 2018, and the plans submitted with it, subject to the conditions in the attached schedule.

Procedural Matter

2. I have omitted that part of the description of development that refers to the site address, as this does not describe development. There are slight differences between the appellant's name on the application and appeal forms, I have used that from the former.

Main Issues

3. The main issues in this appeal are: (i) the effect of the proposed development on the character and appearance of the area; and (ii) whether or not the development would comply with national policy which seeks to steer new development away from areas the highest risk of flooding.

Reasons

Character and Appearance

4. The appeal site is largely located to the north of 30 Williams Gardens and to the rear of 39- 49 Woodside Crescent. The main part of the site, which is largely enclosed by timber fencing, is currently vacant. Most of the vegetation has been cut back and there are a few trees around parts of the perimeter of the site. The remainder of the site runs from the fence to a turning head on

William Gardens, through which the proposed curving access drive would run. That part of the access drive from the road to the timber fence was in-situ at the time of my site visit.

5. The site comprises an island of undeveloped land surrounded by residential properties. Those with which the site is most readily seen from public vantage points, on William Gardens, are mostly fairly large detached dwellings. Other development abutting the site consists of detached and semi-detached dwellings. All of these dwellings have gardens, many of which are large.
6. The two detached dwellings that are proposed would reflect the built form of the area, and the Council has no objection to their designs. The large plots, and consequently low density of the proposal, would harmonise with properties surrounding the site. This, allied to the positioning of the proposed dwellings, would have the very important effect of creating a clear visual link between William Gardens and the proposed development. They would not, therefore, appear isolated or visually divorced from the surrounding development.
7. There have been two dismissed appeals¹ for residential development on the site. Both of those schemes proposed more dwellings than is the case before me, and so differed significantly from it. Furthermore, there have been substantial changes in national and local planning policy since the first of these appeal decisions, including the introduction of the National Planning Policy Framework (the Framework), and changes to the Framework the since the latter. Notwithstanding these changes, I have taken both decisions into account in my deliberations.
8. In the earlier appeal, the proposed access drive ran in a straight line from the turning head in William Gardens to the site. In the latter it described much the same line as is proposed here, and the Inspector found that this would have had a materially worse relationship between the existing and proposed development than that proposed in the scheme for the earlier appeal. I read this comment in the context that the access would not have been seen in conjunction with the development which it was designed to serve, and its curved nature would draw further attention to this poor visual relationship. Even if my interpretation differs in this regard, I have the advantage of having seen the finished access drive and find that, in this case, it does not not cause harm to the area.
9. Consistency in decision-making is, of course, very important. Although I reach a different conclusion from those of earlier Inspectors, each proposal has to be assessed on its individual merits. The proposal before me is a marked improvement, when assessed against the earlier appeal proposals, and represents an appropriate way in which to develop the site.
10. The Council has described the site as a 'Green Corridor', although this does not seem to be a formal designation. Given its limited size, and degree of enclosure by surrounding houses which cut it off from any other green space, I would not describe it as a corridor. Its appearance reflects what it is, a small piece of undeveloped land left over from earlier housing development.
11. An ecological assessment² sets out that the present ecological value of the site is limited and proposes some measures that would protect what there is of

¹ APP/M3645/A/08/2061588 and APP/M3645/W/17/3176694

² Ecological Walkover Assessment – Ethos Environmental Planning, September 2008

value and provide some improvement in this regard. Whilst I understand that not all pieces of land of this sort should be built on, the ecological value of the site does not militate against the principle of the proposed development.

12. The proposed development would not look contrived, but would respect the form of development in the area; it would not harm the character and appearance of the area. As such, it would accord with those terms of Policy CSP18 of the Tandridge District Core Strategy, adopted October 2008, (CS), and those of Policy DP7 of the Tandridge Local Plan Part 2: Detailed Policies 2014-2029, adopted July 2014 (LP) that require development to reflect and respect the character, setting and context of the site.

Flood Risk

13. The site lies within Flood Zone 2, which is defined in Table 1 in the Government's Planning Practice Guidance ('PPG') as having a 'Medium Probability' of flooding. The evidence before me shows that flooding has occurred in the village.
14. I have assessed this main issue taking into account the appellant's site-specific Flood Risk Assessment (FRA) which applied the Sequential Test to the proposed development, as required by the PPG. The sites that are allocated for development in the village did not bear comparison with the proposal, as they are all larger and located within the Green Belt. The small number of potential sites within the settlement boundary for Smallfield are either unsuitable for development or unsuited to the number of dwellings proposed here. The FRA therefore satisfactorily demonstrates that there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding and consequently the proposal passes the Sequential Test.
15. Following the guidance in, amongst others, the Framework, PPG and the Tandridge Level 2 Strategic Flood Risk Assessment, in the circumstances an Exceptions Test is not required.
16. Therefore, in the light of the evidence that has been put forward, my finding on this issue is that the development would comply with national policy which seeks to steer new development away from areas the highest risk of flooding. Therefore, the proposal accords with LP Policy DP21.

Other Matters

17. With regards to the dangers and disruption associated with construction and other traffic, I note that there was no objection raised by the County Highway Authority or the Council. From what I saw at my site visit, I have no reason to reach a different conclusion. There is no requirement for the provision of affordable housing in the proposal, as the number of new dwellings proposed is below the threshold of 10 set out in paragraph 63 of the Framework. The actions of a party associated with the clearance of the land is not an issue for this appeal. Any effect on property values that might result is not a matter that has influenced my consideration of the planning merits of the scheme.
18. I note the comments of Burstow Parish Council and others, with regards to the effect of the proposal on the living conditions of neighbours through overlooking and loss of privacy. My view is that, subject to the conditions I propose in this regard, the living conditions of the occupants of neighbouring

properties would not be significantly adversely affected by the proposed development.

19. In its consultation response, Thames Water identified that the existing foul water infrastructure was unable to accommodate the needs of the development proposed. This matter was also raised by a number of residents. However, Thames Water proposed the use of a condition were planning permission granted and this is addressed, below. I have no definitive evidence of pressure on water supply in the area and the water company made no comment in this regard. Therefore, I am only able to give this matter very limited weight.

Conditions

20. Both parties have proposed a list of conditions that might be applied, in the event that the appeal was allowed. I have assessed these in the light of the tests of conditions in paragraph 55 of the Framework.
21. In addition to the statutory time limit condition, I find that a condition regarding compliance with the approved plans is necessary in the interests of clarity. A condition relating to hard and soft landscaping conditions is necessary to protect the character and appearance of the area, though I have used slightly simplified wording.
22. I agree that a condition requiring the approval of external finishes is required, to protect the appearance of the buildings. A photovoltaic system is proposed, to reduce carbon dioxide emissions in line with CS Policy CSP14. As I do not have the details of this system, a condition requiring submission of details of this, for assessment by the Council, is necessary. I find that a condition relating to the proposed first floor windows is necessary, to protect the privacy of properties in Woodside Crescent. However, as they are only proposed on the dwelling on Plot 1, I simply refer to that property. It is necessary to attach a condition relating to the recommendations contained in the ecological assessment, in the interest of biodiversity.
23. I have attached a condition relating to cycle and refuse/recycling facilities, to ensure a satisfactory living environment. However, it is not necessary for this issue to be addressed through a pre-commencement condition. I have amended the Council's proposal to require the submission of details prior to the occupation of the dwellings and added a retention clause. Although I agree that a condition requiring external materials is required, it is not necessary for this to be a pre-commencement condition. I have amended the timing of the submission of the details to read prior to the application of the finishes and added a requirement for the finishes to be applied prior to the occupation of the dwellings.
24. Both parties submit that a condition addressing the acknowledged limitations of the wastewater network that would serve the dwellings, as proposed by Thames Water, is necessary and I have no reason to disagree. I have, however, worded this so that the Council, rather than the water company, is responsible for assessing any submissions.
25. The PPG³ advises that conditions restricting the use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. The Council has proposed three such reasons. I am

³ Paragraph: 017 Reference ID: 21a-017-20140306. Revision date: 06 03 2014

not persuaded that there is the necessary justification for the first of these, and have not attached this to my decision. I find that there is such justification for that relating to new windows on the buildings' side elevations, in the interests of the privacy of the occupants of neighbouring properties. I have, however, applied this restriction to windows at first floor level only. For the same reason, I agree that a condition restricting new windows and dormers in the proposed dwellings' roofs is also necessary.

Conclusion

26. In the light of the above reasons, and having taken all other matters into account, the appeal is allowed.

Roy Curnow

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Unnumbered Promap Location Plan; SK.01 Rev A; SK.02; and SK.03 Rev A.
- 3) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The approved hard landscaping works shall be carried out prior to the occupation of the development.
- 5) Prior to the occupation of the dwellings hereby approved, full details of cycle storage and refuse/recycling storage, including any collection points as required, have been submitted to and approved in writing by the District Planning Authority. The development shall be carried out in accordance with these approved details and shall thereafter be retained.
- 6) Details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted shall be submitted to and approved in writing by the District Planning Authority prior to their being fixed or applied to the approved buildings. No dwelling shall be occupied until it has been finished in accordance with these approved details.
- 7) Before the development hereby approved is occupied, the first floor windows in the north elevation of the dwelling hereby approved on Plot 1 shall be fitted with obscure glass and shall be non-opening unless the parts of the windows can be opened are more than 1.7m above the floor level of the rooms in which the windows are installed and shall be permanently maintained as such.
- 8) Before the development hereby approved is occupied, details of the solar photovoltaic system, as specified in the Energy Statement produced by Briary Energy, dated September 2018, shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the system is installed in accordance with the approved details, and this system shall not thereafter be retained in accordance with these details.
- 9) The development hereby permitted shall be carried out in accordance with the recommendations and mitigation measures set out in 'Ecological Walkover Assessment' by Ethos Environmental Planning, dated September 2018.

- 10) No properties shall be occupied until confirmation has been provided that either:
 - (a) All wastewater network upgrades required to accommodate the additional flows from the development have been completed; or
 - (b) A housing and infrastructure phasing plan has been submitted to and agreed in writing by the local planning authority to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with this plan.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no windows shall be inserted at first floor level in the side left or side right elevations, as identified on Drawings SK.02 and SK.03 Rev A, of the dwellings hereby permitted, (apart from those expressly authorised as part of this permission).
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order with or without modification) no windows or dormer windows shall be inserted into the roof of the dwellings hereby permitted.

END OF SCHEDULE