



Appeal Decisions

Site visit made on 10 September 2019

by **AJ Steen BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Appeal A Ref: APP/Y3615/C/19/3219807

Appeal B Ref: APP/Y3615/C/19/3219808

Land and buildings known as 38 South Lane, Ash, Guildford GU12 6NG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- Appeal A is made by Woking Labour Club And Institute Ltd and Appeal B is made by Sharaz Homes Ltd against an enforcement notice issued by Guildford Borough Council.
- The enforcement notice, numbered EN/18/00078, was issued on 29 November 2018.
- The breach of planning control alleged in the notice is failure to comply with conditions Nos 2, 4 and 10 of a planning permission Ref 15/P/00391 granted on 11 October 2016.
- The development to which the permission relates is to demolish an existing bungalow, raise ground level and construct 1 No. detached houses (4 bed), 1 pair of semi-detached houses (2 x three bedroom) and a terrace of three houses (3 x three bedroom) and associated access, amenity and parking. The conditions in question are Nos 2, 4 and 10 which state that:
 - 2. *The development hereby permitted shall be carried out in accordance with the following approved plans: L.01, P.06 and LP.1931 received on 06/03/2015; B.01 Rev A, P.07 Rev C, P.03 Rev B, P.04 Rev A, P.05 Rev B and P02 Rev B received on 17/04/2015, 17145-01 Rev E received on 14/10/2015 and P.01 Rev D and P.08 received on 01/12/2015.*
 - 4. *Prior to the first occupation of the development hereby approved, full details of both hard and soft landscape proposals, including a schedule of landscape maintenance for a minimum period of 10 years, have been submitted to and approved in writing by the local planning authority. The approved landscape scheme (with the exception of planting, seeding and turfing) shall be implemented prior to the occupation of the development hereby approved and retained.*
 - 10. *No development shall take place until a scheme for the provision of surface water drainage of the site (including surface water from the access/driveway) has been submitted to and approved in writing by the local planning authority. The scheme shall include measures to prevent the discharge of water onto the public highway and shall incorporate sustainable drainage details (SuDS), and proposals for future maintenance for the lifetime of the development. The scheme shall also incorporate an access road design that ensures safe access and exit in the event of a flood in accordance with the requirements of the DEFRA/Environment Agency "Flood Risk Assessment Guidance for New Development" Technical Report FD2320/TR2. Finished floor levels of habitable buildings shall be no lower than 74.30m AOD. The development shall not be brought into first occupation until the approved surface water drainage has been constructed in accordance with the approved scheme.*
- The notice alleges that the conditions have not been complied with in that:
 - 2. *It appears to the Council that this condition has not been complied with because:*
 - *The pedestrian access to plots 1, 2, 3, 4, 5 and 6 has not been implemented in accordance with approved plan "P.01 D".*
 - *Secure cycle storage has not been implemented in accordance with approved plan "P.01 D".*
 - *The gardens for plots 3, 5 and 6 have not been laid out in accordance with*

approved plan "P.01 D".

4. *It appears to the Council that this condition has not been complied with because part of the development is occupied and the landscaping details have not been implemented in accordance with drawing "1217", approved in writing by the local Council on the 20th March 2017.*
 10. *It appears to the Council that this condition has not been complied with because part of the development is occupied and the surface water drainage scheme required by condition 10, submitted to and approved in writing by the Council on the 25th May 2017 has not been constructed in accordance with the approved scheme.*
- The requirements of the notice are:
You must:
Comply with Condition 2 by:
 1. *Altering the pedestrian access to plots 1, 2, 3, 4, 5 and 6 so that the pedestrian access to these properties are in accordance with approved plan "P.01 D" attached hereto*
 2. *Providing secure cycle storage in accordance with approved plan "P.01 D"*
 3. *Altering the boundaries of plots 3, 5 and 6 to provide the gardens for those plots in accordance with approved plan "P.01 D"*Comply with Condition 4 by
 4. *Removing all unauthorised planting and unauthorised hard landscaped areas from the Land and implementing the landscaping scheme, including location of landscaping and species, in accordance with approved landscaping drawing "1217" attached hereto*Comply with Condition 10 by
 5. *Digging up the access road, and any other parts of the Land as necessary, and implementing in full the approved drainage strategy, including the approved site levels in accordance with approved scheme documents "Surface Water Drainage Management dated March 2017", "Drainage Construction Details N1-07-02 B" and "Drainage layout Plan N1-07-01 B" attached hereto*
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2) (a) (Appeal B only), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal by Woking Labour Club And Institute Ltd was made against the enforcement notice but it was only necessary for one appellant to pay the fee in order for ground (a) and the deemed planning application to be considered. Sharaz Homes Ltd paid the fee for their appeal but Woking Labour Club And Institute Ltd did not so their appeal under ground (a) has lapsed.
2. During the course of the appeal, the Guildford Local Plan: Strategy and Sites (LPSS) was adopted. Some policies of the Guildford Borough Local Plan (LP) have been superseded by policies in the LPSS. The remaining policies in the LP and new policies of the LPSS comprise the development plan. I have based my decision in the ground (a) appeal on that development plan.

The Appeal on Ground (e)

3. Section 172 of the Act requires that a copy of an enforcement notice shall be served on the owner of the land to which it relates. In this case, the Council did

not serve notice on Woking Labour Club And Institute Ltd who state that they were owners of the land on the date the notice was served, having bought it from Sharaz Homes Ltd.

4. I note that the Council obtained title of the site from the Land Registry on the day prior to service of the notice that confirmed the registered owner of the land was Sharaz Homes Ltd. They did not issue a Planning Contravention Notice or a Requisition for Information prior to service of the notice. Nevertheless, their attention had been drawn to the change of ownership by the parties prior to the issue of the notice. It would have been possible for the Council to serve notice on Woking Labour Club And Institute Ltd. The Council's evidence is that service was in any event achieved by affixing a copy of the notice addressed to "the owner" at the premises.
5. Irrespective of whether or not the Council served the notice correctly, Section 176(5) of the Act give me the power to disregard non-service provided that person has not been substantially prejudiced by the failure to serve the notice on them. In this case, Woking Labour Club And Institute Ltd were aware of the notice and have been able to lodge their appeal. Whilst their appeal under ground (a) will not proceed for the reasons given above, I am satisfied that they have not been substantially prejudiced.
6. For these reasons, I conclude that the appeal under ground (e) should fail.

The Appeal on Ground (a) and the Deemed Planning Application

Background and Main Issues

7. The deemed planning application under Section 177(5) of the Act is retrospective, to carry out the original development without complying with the particular conditions enforced against. I need to consider whether these conditions meet the tests set out in paragraph 55 of the National Planning Policy Framework (the Framework), in particular whether they are enforceable and reasonable.
8. The conditions that have not been complied with relate to the landscaping of the development, requiring a drainage scheme and provision of cycle parking. The appellant has put forward alternative schemes in relation to these matters that were considered by the Council, and refused, under application reference 19/P/00314. I have taken account of these alternative schemes in coming to my decision.
9. Consequently, the main issues are:
 - the effect that removing or varying conditions 2 and 4 relating to pedestrian access, layout of gardens and landscaping would have on the character and appearance of the surrounding area;
 - the effect that removing or varying condition 10 requiring a drainage scheme would have on flood risk; and
 - the effect that removing or varying condition 2 relating to cycle storage would have on an efficient, safe and accessible means of transport with an overall low impact on the environment.

Reasons

Character and appearance

10. The new houses that have been constructed at 38 South Lane are located to the rear of the site, behind other properties. Surrounding development comprises a mix of detached and semi-detached houses, bungalows and chalet bungalows set within landscaped gardens. Over the access drive in front of the houses are other new dwellings with rear gardens that back onto the appeal site. As a result, the surrounding area has a spacious, green character and appearance.
11. The development subject of the enforcement notice comprises a pair of semi-detached houses, row of three terraced houses and a detached house. These are accessed via a long drive between nos. 36 and 40 South Lane. The areas of parking and hardstanding to the front are substantial, with hedges between the parking spaces in front of the dwellings and adjacent to the boundary fence to the neighbouring properties. The turning and parking area between the terrace and detached house extends a substantial distance, to the rear boundary. This contrasts with that approved, which showed substantially more green landscaping to the front of the houses and around the parking areas, including in the corner beside the entrance drive and at the end of the turning area between the terrace and detached house.
12. The layout and limited amount of planting results in a substantial area of hardstanding to the front of the houses and between the terrace and detached house that contrasts with the more spacious and greener surrounding development. Although visible only from limited public vantage points along the access drive and from surrounding properties, this results in a somewhat harsh and incongruous character and appearance to the development.
13. For these reasons, I conclude that the completed landscaping results in harm to the character and appearance of the surrounding area. As such, it conflicts with Policies D1 of the LPSS, G5 of the LP and the National Planning Policy Framework (the Framework) that seek high quality design that responds to the distinctive local character of the area, including a high standard of landscape design.
14. The details submitted under application reference 19/P/00314 reflect the development carried out. No evidence has been suggested that an alternative landscaping scheme would overcome my conclusion. As a result, I consider that it would not be appropriate to provide a new condition to enable further submission of details.

Flood risk

15. Condition 10 of planning permission reference 15/P/00391 required details of a drainage scheme be approved and constructed prior to first occupation of the dwellings. I understand that a scheme was submitted and approved by the Council under reference 17/D/00017. However, the development was constructed with drainage other than in accordance with that scheme. Land levels have been raised above that shown on that scheme and there are changes to the ground profiles that restricts flood flows from the open watercourse on the boundary. That results in additional water moving

downstream and increased risk of flooding to neighbouring properties. It could also lead to ponding at 40 South Lane.

16. The alternative submitted in application reference 19/P/00314 was refused as the Council remain concerned that the strategy may lead to increased off-site surface water flooding risks. This retains the raised ground levels that means surface water cannot discharge to a watercourse in accordance with the SuDS hierarchy. Discharge through the sewage system would require sewerage undertaker approval. In addition, 40 South Lane would remain liable to ponding.
17. The collector drain, porous paving and the interaction between the paving and service trench would require further details in order to ensure they were acceptable. In any event, the paving will alter given my conclusions above on landscaping.
18. For these reasons, the works undertaken are likely to lead to surface water flooding of neighbouring gardens and ponding at 40 South Lane. The revised details submitted would not overcome these concerns. Nevertheless, alterations to those details may overcome the problems identified by the Council. However, these are not currently available and it is not certain that these would remove the flood risk.
19. Taking account of all the above, I conclude that the drainage works as completed have led to an increase in flood risk. The alternative scheme in the revised plans has not demonstrated that it would overcome the flood risk. As such, they conflict with Policy P4 of the LPSS, Policy G1 of the LP and the Framework that seek adequate land drainage to meet the needs of the development and that it would not result in an increase in surface water run-off.

Cycle storage

20. No cycle storage has been provided in accordance with drawing P.01 Rev D. I note that the Council suggest the revised location of cycle parking shown on drawing BR.001 Rev C would be acceptable. Whilst I see no reason to disagree with their conclusion in this regard, I have already concluded that the landscaping proposals on that drawing would result in harm to the character and appearance of the area. As a result, there is no viable alternative scheme for provision of cycle parking.
21. For these reasons, I conclude that the lack of cycle parking means the development does not contribute to an efficient, safe and accessible means of transport with an overall low impact on the environment. As such, it is contrary to Policy ID3 of the LPSS and the Framework that seek an integrated, accessible and safe transport system, including providing secure, accessible and convenient cycle parking.

Conclusion

22. Conditions 2, 4 and 10 are enforceable, relevant to planning, relevant to the development to be permitted, precise and reasonable in all other respects. The submitted plans would not overcome the reasons for issuing the notice. As a result, the appeal fails under ground (a).

The Appeal on Ground (f)

23. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
24. In this case, the requirements seek to require provision of cycle parking, alterations to the landscaping in accordance with the agreed landscaping drawing and alterations to the surface water drainage in accordance with the agreed drainage strategy. As such, the requirements go no further than seeking full compliance with the requirements of conditions 2, 4 and 10. Clearly, therefore, the purpose of the notice is to remedy the breach of planning control.
25. For the reasons set out earlier in the appeal under ground (a) I have found that the proposed alternative schemes are unacceptable.
26. As a result, I conclude that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control. The appeal on ground (f) therefore fails.

The Appeal on Ground (g)

27. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
28. I understand that development is currently taking place on the adjacent site that will share its access with this development. The surface water drainage works are likely to be shared, at least to some extent, between the two developments. There may also be some links between the drainage works and landscaping, in turn linked to the provision of cycle parking, such that the compliance period needs to be consistent.
29. The appellant is legally obliged to comply with the requirements of the notice and it is necessary for the period for compliance to be clear. As such, an open ended period would not be appropriate.
30. In considering the appropriate length of time for the surface water drainage scheme to be agreed and installed, I have taken the above factors into account. That has led me to the conclusion that a period of six months for the scheme to be installed would be reasonable. As set out above, I consider that the compliance period for completion of the landscaping works should be the same. The appeal on ground (g) therefore succeeds to this limited extent.

Conclusion

31. For the reasons given above, I conclude that the appeal on ground (g) should succeed while the appeals on grounds (e), (a) and (f) fail. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

It is directed that the enforcement notice is varied in Section 6 by deletion of the words "Three months" and their substitution with the words "6 months".

32. Subject to the variation, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

AJ Steen

INSPECTOR