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## Appeal Decision

Site visit made on 23 September 2019

**by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 November 2019**

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**Appeal Ref: APP/M2270/W/19/3231861**

**21 Newlands, Langton Green, Royal Tunbridge Wells TN3 0DB**

- 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 Mark Pantry, JP Whelan Homes Ltd, against the decision of Tunbridge Wells Borough Council.
  - The application Ref 18/03582/FULL, dated 12 November 2018, was refused by notice dated 18 February 2019.
  - The development proposed is the demolition of 21 and 23 Newlands to be replaced with 6 x three bedroom homes and 4 x four bedroom homes with associated access, parking and landscaping.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. Following its consideration of the Preliminary Ecological Appraisal and the outcomes of bat surveys submitted with the appeal, the Council withdrew its reason for refusal concerning the effect of the development on protected species. I have no reason to disagree with its conclusion on this issue. The remaining, main issues in the appeal are the effect of the proposed development on:
  - the character and appearance of the area;
  - the living conditions of the occupiers of 1 Mercers and 6 Bushy Gills with particular regard to, respectively, outlook and privacy;
  - surface water drainage; and,
  - whether it would prejudice the planting of a replacement tree.

### Reasons

#### *Character and appearance of the area*

3. Given the number of cul-de-sacs in this area, another spur of development would not appear out of place. However, the area is characterised by the spacious arrangement of street-facing houses, generally detached, of 2-storeys, and set on large plots of sufficient width to accommodate on-plot parking. In the context of this distinctive pattern of development, the terraced and semi-detached forms and 3-storeys of the proposed houses would appear out of place, particularly so given their smaller plot sizes, greater footprint:plot
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- ratios, and the main front building lines of the houses on plots 1-4, which project substantially beyond the established, principal front lines in this section. The parking court is another factor of the incompatibility of the proposal with this section of Newlands, where the surrounding plots tend to have sufficient width to accommodate on-plot parking or garages.
4. Moreover, there appear to be two loose architectural styles in this street, from the more traditional red-brick houses with hipped and cat-slide roofs to the more modern gabled houses using lighter bricks, tile-hanging, boarding or render. The longer roof-slopes with half-hips and second-storey dormers of the proposed houses would appear to belong to neither; they would reduce the architectural coherence of the street scene. I have acknowledged that cul-de-sacs of houses are part of the pattern of development of the area. However, the houses tend to be arranged to front the street, whereas this proposal sites the houses front to back across a parking area.
  5. I note that policy 6 of the Core Strategy 2010 (CS) states that the density of development should not generally be less than 30 dwellings per hectare, but this is predicated on it being appropriate to the specific character of the locality. The National Planning Policy Framework too indicates that development should make efficient use of land, but it indicates that account should be taken of the desirability of maintaining an area's prevailing character and setting (including residential gardens).
  6. I appreciate the need for buildings to be of their own time. Slavish copying of surrounding buildings would miss the opportunity to enrich the character of the area, and I see nothing precluding innovation or change in this location. However, development needs to be sympathetic to its surrounding built environment and landscape setting, with which for the reasons above, the proposed development would be incompatible.
  7. I conclude that the development would undermine the distinctive and spacious character of the area, appearing at odds with the features which make it a high quality place. It would conflict with CS policy CP4 and policy EN1 of the Local Plan 2006 (LP) which seek to conserve and enhance the locally distinctive sense of place and character.

*Living conditions of surrounding occupiers*

8. The house on plot 10 would be close to the lightly planted back boundary of 1 Mercers, which appears to have a lower ground level than the appeal site. While there would be no overlooking of No 1, the height and proximity of the house on plot 10 would have an over-enclosing effect on the occupiers of No 1 when in their garden, which I saw includes a terrace, a greenhouse, a shed, as well as lawn and shrubs. In addition, despite the hipped end of the house on plot 10 and its oblique siting, because of its height, the development would be visually intrusive in the outlook of the closest first floor bedroom of No 1.
9. I note the reference to varying distances separating houses in the area. However, none appeared to me as close as this case, with the separation distance between the houses on the opposite corner of Mercers appearing substantially greater than that proposed between the house on plot 10 and No 1. The proposed development would reduce the living conditions of the occupiers of 1 Mercers by an unacceptable degree, placing it in conflict with LP policy EN1 which protects the residential amenities of adjoining occupiers.

10. The bedroom windows of plots 5-10 would face towards 6 Bushy Gills. However, the dense and tall planting on the boundary between them would screen views towards No 6. Even without the screen of planting, given the distances of these windows from the boundary of No 6, and their oblique position to No 6, there would be no harmful loss of privacy within No 6. Similarly, given the location in the built-up area where a degree of mutual overlooking of gardens and roofs is generally accepted, there would be no harm to the privacy of the occupiers of No 6, in their garden or below the permitted roof lantern, and no conflict with LP policy EN1.
11. I have taken into account the proximity of the proposal to the occupiers of other, neighbouring houses. Given its degree of separation, the screening on boundaries and its location within the built-up area, where some overlooking is generally accepted, the proposal would not cause significant harm to the living conditions of other neighbours.

#### *Surface water drainage*

12. The appellant submitted with the appeal an outline, low maintenance, attenuation strategy to drain surface water from the development to the public sewer. The design was based on the assumption that soakaways are unsuitable because of poor ground infiltration, which premise the Lead Local Flood Authority rejected. Following this, the appellant submitted an amended strategy which incorporated a design for soakaways and attenuation tanks, based on assumed infiltration rates.
13. Were I not dismissing the appeal for other reasons, I would have sought the view of the Council on the amended strategy. However, even without the alternative drainage strategy, it appears quite reasonable for the infiltration characteristics of the site to be determined under planning conditions, which could also require the submission of the detailed drainage strategy, to be approved by the Council, based on that finding.
14. Given that the outline drainage strategy design includes an alternative drainage design, I am satisfied that a planning condition would be able to make the development acceptable in planning terms. While LP policy EN1 to which the Council refers is less relevant to this issue, subject to an appropriate planning condition, there is no substantive evidence that the proposed development would conflict with CS policy 5 which seeks to reduce potential flood risk, and which encourages sustainable design.

#### *Replacement tree*

15. A protected<sup>1</sup> but diseased oak tree within the proposed site was given permission to be felled subject to a replacement oak being planted on or near to the place where it stood. The appellant proposes to plant a replacement in the back garden of unit 1 of this proposal.
16. In as much as the existing tree was a back garden tree, its replacement would similarly be in a back garden. The replacement tree would not be in the same position as its predecessor, being closer to one street than the other. Nonetheless, it would have a similar relationship to the street scene, as a background tree. Without substantive evidence that it would not be able to thrive in the proposed location, I cannot conclude other than that the proposed

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<sup>1</sup> LPA Ref: 18/00046/TPO

development would not prejudice the planting of the replacement tree. While saved policies LBD1 and EN13 to which the Council refers have less relevance, there would be no conflict with CS policy 4 which seeks to conserve the urban landscape and to protect biodiversity.

### **Other Matters**

17. The appellant has identified a single badger hole on the site and proposes to obtain a sett closure licence from Natural England and to seal the hole in accordance with its guidance. A planning condition could secure the development be carried out in accordance with the Badger Method Statement to make it acceptable in planning terms.

### **Planning Balance**

18. I have found that the proposed development could be conditioned to provide suitable surface water drainage, and it would not preclude the planting of the replacement tree. It would provide 8 additional homes which is a social benefit that attracts considerable weight. It would bring economic benefits from its construction, and from the spending of future occupiers in the local economy. However, it would undermine the distinctive and spacious character of the area, appearing at odds with the features which make it a high quality place, and it would harm the living conditions of the occupiers of 1 Mercers.
19. While I note that the Council accepts that it cannot demonstrate a 5-year supply of deliverable housing sites, the harm from the proposed development would significantly and demonstrably outweigh its social and economic benefits. Taking the Framework as a whole, I consider that the proposal would be an unsustainable form of development.
20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that I determine this appeal in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposal conflicts with the development plan when read as a whole. Given that on the basis of the planning balance it would not be sustainable development, there are no material considerations warranting a decision other than in accordance with the development plan.

### **Conclusion**

21. For the reasons above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*Patrick Whelan*

INSPECTOR